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COMPILATION

OF THE

# General Laws Relating to Townships

LEGISLATIVE REFERENCE BUREAU

---

PREPARED BY

John H. Fertig, Esq. and Frank M. Hunter, Esq.,

UNDER THE DIRECTION OF

James N. Moore, Director

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HARRISBURG, PA.:

WM. STANLEY RAY, STATE PRINTER

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## PREFACE

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This compilation of the township law was prepared pursuant to the direction of the General Assembly in the Act of May 14, 1915, P. L. 474. In preparing this compilation, the Acts of Assembly have been published in the exact language as they appear in the pamphlet laws, with notes after each section giving the citation thereof and such other annotations and comments as may be of value in clarifying the reading of the section, and in determining its present effect. No attempt has been made to make the annotations complete. This is the function of the digest and text book. A chronological table of the statutes used in the compilation and an index have been appended.

The arrangement of the material was made with a view of setting out, under appropriate headings, the law particularly applicable to each class of townships. In many cases this is purely a matter of judgment, and it is not unlikely that errors may have resulted in the application given to certain sections.

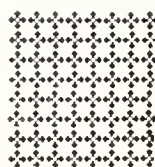
Considerable trouble was experienced with the numerous acts relating to municipalities. While the Supreme Court has lately ruled that a first class township is not a municipal corporation, there are several late cases decided by the lower courts which rule that a township is a municipality. Pursuant to this ruling a number of acts relating to municipalities have been included.

The material relating to roads includes such provisions only as impose duties upon the township or its officers. The law relating to the laying out of roads under the general road law has not been included, as the whole duty devolves upon the Court of Quarter Sessions. The material relating to taxation does not include any provisions relating to the assessment of property for taxation purposes, or the duty of assessors, for the reason that all assessments for township purposes are based upon the county assessment. Assessors while elected as township officers perform duties for the county only.

We shall be gratified if the person into whose hands this compilation comes will read it carefully, criticize it fully and freely, and send any resulting suggestions or recommendations to the Bureau.

February 1, 1916.

LEGISLATIVE REFERENCE BUREAU,  
JAMES N. MOORE,  
Director.



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## I.

### ERECTION OF TOWNSHIPS.

#### (a) Erection by Courts of Quarter Sessions.

1. The several courts of quarter sessions shall have authority within their respective counties, to erect new townships, to divide any township already erected, (and to alter the lines of any two or more adjoining townships,) so as to suit the convenience of the inhabitants thereof, (and to cause the lines or boundaries of townships to be ascertained and established).

Sec. 13, Act of April 15, 1834, P. L. 537.

The Act of April 28, 1899, P. L. 104, contains no provision which is inconsistent with or repugnant to the provisions of this section or its supplements; nor is there anything in the nature of a township of the first class which prevents its division in the mode prescribed by the general law: *Stowe Township Division, 23 Super. Ct. 285.*

2. Upon application, by petition, to a court of quarter sessions for the purpose of erecting a new township, (or altering the lines of any township, or of ascertaining and establishing the lines or boundaries of any township), the said court shall appoint three impartial men, if necessary, to inquire into the propriety of granting the prayer of the petition, and it shall be the duty of the commissioners so appointed, or any two of them, to make a plot or draft of the township proposed to be divided, and the division line proposed to be made therein, or of the township proposed to be laid off, (or of the lines proposed to be altered of two or more adjoining townships, or of the lines proposed to be ascertained and established), as the case may be, if the same cannot be fully designated by natural lines or boundaries, all which they, or any two of them, shall report to the next court of quarter sessions, together with their opinion of the same, and at the term after at which the report shall be made, the court shall take such order thereupon as to them shall appear just and reasonable.

Sec. 14, Act of April 15, 1834, P. L. 537.

3. In all cases of proceedings under the 14th section of the act to which this is a supplement, for any of the purposes therein mentioned, the respective court shall direct a second commission or review, for the same purposes, on the petition of a majority of the voters of the township or townships affected by said proceedings: Provided, That such petition shall be presented to the court at or before the second term thereof, after the final confirmation of the report of the first commission or review.

Sec. 1, Act of April 26, 1854, P. L. 489.

This Act is a supplement to Section 14 of the Act of April 15, 1834, P. L. 537, *supra* Section 2.

4. In proceedings to erect a new township out of parts of two or more townships in this commonwealth, it shall be the duty of the court of quarter sessions of the proper county, when a return has been made, by commissioners appointed under the provisions of the act to which this is a supplement, favorable to the erection of a new township, to order a vote of the qualified electors of the township from which the largest number of taxables to be embraced in the proposed new township is to be taken, and also of the qualified electors outside of such township, residing within the bounds of the proposed new township, to be taken on the question of the erection of a new township.

Sec. 1, Act of April 24, 1857, P. L. 304.

This section is a supplement to Sections 13 and 14 of the Act of April 15, 1834, P. L. 537, *supra* Sections 1 and 2.

5. It shall be the duty of the said courts, upon the return being made to them as aforesaid, to fix a day certain upon which the election officers of the township from which the largest number of taxables to be embraced in the proposed new township is to be taken, at which the qualified electors residing within the boundaries named in the 1st section of this act may vote, shall hold an election at the place fixed by law for holding township elections in said township, and be governed therein by the several laws of this commonwealth relating to township elections. And it shall be the duty of the constable of said township, or if there be no constable, then one of the supervisors or road commissioners, to give at least fifteen days' notice of the time and place of holding said election, by posting not less than six written or printed handbills in the most public places in each of the townships which are to be divided, by the formation of the proposed new township.

Sec. 2, Act of April 24, 1857, P. L. 304.

This section is a supplement to Sections 13 and 14 of the Act of April 15, 1834, P. L. 537, *supra* Sections 1 and 2.

6. The ballots to be deposited by the electors, shall have written or printed on the outside thereof, the words "new township," and on the inside, the words "for a new township," or "against a new township."

Sec. 3, Act of April 24, 1857, P. L. 304.

This section is a supplement to Sections 13 and 14 of the Act of April 15, 1834, P. L. 537, *supra* Sections 1 and 2.

Quære:—Whether this ballot should be in the form prescribed by section 14 of the act of June 10, 1893, P. L. 419, as amended by the act of April 29, 1903, P. L. 338; see *McLaughlin v. Summit Hill Borough*, 224 Pa. 425.

7. It shall be the duty of the officers of said election, after the polls have been closed agreeably to law, to count the ballots and certify, within five days thereafter, the number of votes for and against a new township, to the clerk of the court of quarter sessions of the proper county; who shall, after filing the said returns in his office, lay the same before the said court at the next session. And if it shall appear that a majority of the votes so taken are "for a new township," the said court shall thereupon order and decree a new township agreeably to the lines marked out and returned by the commissioners; but if a majority of the votes have been given "against a new township," no further action shall be had upon said proceedings.

Sec. 4, Act of April 24, 1857, P. L. 304.

This section is a supplement to Sections 13 and 14 of the Act of April 15, 1834, P. L. 537, supra Sections 1 and 2.

8. Whenever a new township has been, or may hereafter be, erected, whether by a division of one township or by uniting parts of two or more adjoining townships, (and whenever a borough has been or may hereafter be erected out of any townships, or parts of adjoining townships,) the court of common pleas of the proper county, sitting in equity, shall have power, upon the application of the proper authorities of said (borough), township or townships, or either of them, by a suit or suits in equity, to adjust all matters of indebtedness between the said old township or townships, and the said new township (or borough;) and in the execution of any decree in any such suit or suits, the proper officers of the township liable to pay shall have power to levy separate rates of taxation, if necessary, on the said parts of townships, so erected into one.

Sec. 1, Act of April 12, 1866, P. L. 109.

This section was repealed so far as it related to boroughs by the Act of May 14, 1915, P. L. 312.

(b) Erection from Townships Divided in the Creation of New Counties.

9. Whenever, by the division of any county of this commonwealth and the erection of a new county therefrom, under the provisions of the act of assembly, entitled "An act to provide for the division of counties of this commonwealth and the erection of new counties therefrom," approved the 17th day of April, Anno Domini 1878, (P. L. 17), any township or townships shall have been divided by the new county line, the courts of quarter sessions shall have authority within their respective counties, upon application to them, by petition of at least twelve freeholders, resident in the territory mentioned or described in said petition, to appoint three impartial men to inquire into the propriety of granting the prayer of the petition; and it shall be the



duty of the said commissioners, or a majority of them, after having been duly sworn to discharge their duty with fidelity, and after giving due notice in the same manner as is required by the laws of this commonwealth in relation to road views, to view the townships mentioned in the said petition, and if in their opinion, or in the opinion of a majority of them, a new township of convenient size and number of inhabitants can be erected, either by consolidating two or more of the parts of said townships remaining in the said county in which these proceedings may be instituted, after the division of the same, or by annexing one or more of such remaining parts of townships to any adjoining township, or by uniting any one or more of said remaining parts of townships with any part of any township not cut by the new county line, but adjoining any one of the said several townships, they shall make a plot or draft of the territory, which, in their opinion, should be included in the new townships, all of which they, or a majority of them, shall report to the next court of quarter sessions of said county, together with their opinion of the same; and if the said commissioners, or a majority of them, shall report in favor of the formation of a new township, the said court shall confirm the same nisi, and order a special election to be held of the qualified voters residing within the territory to be erected into a new township according to the draft, of the commissioners, at a time and place to be fixed by the said court, not more than sixty days from the confirmation nisi, and at the most convenient place within said territory, to vote upon the question of erecting said new township; and if a majority of the legal votes cast at said election shall be in favor of the erection of said township, the said court, or the president judge thereof, in vacation, shall order the same to be erected and established in accordance with the report of the commissioners, and shall name the same, and shall appoint such township officers as shall be necessary to conduct the affairs of said township until the next general election of township officers, which shall occur more than three months after the said order establishing said new township has been made.

Sec. 1, Act of May 13, 1879, P. L. 52.

The repeal of the Act of April 17, 1878, P. L. 17, by the Act of June 27, 1895, P. L. 398 would seem to leave this and Sections 10, 11, 12 and 13 nothing upon which to operate.

10. Whenever the commissioners appointed under the provisions of the first section of this act shall have reported in favor of the erection of a new township, it shall be the duty of the said court of quarter sessions to appoint officers for holding said election, who shall give notice of the time and place fixed for holding the same, by advertisement, for three successive weeks, in at least two newspapers published in the said county, and by at least five handbills

posted, for at least ten days prior to said election, in conspicuous places within the territory proposed to be embraced in the new township; and shall further, at said time and place, hold said election, and return the same forthwith to the office of the clerk of the court of quarter sessions.

Sec. 2, Act of May 13, 1879, P. L. 52.

11. In case there shall be included in the draft returned by the commissioners aforesaid any part of a township which has not been severed by the new country line, it shall be the duty of the said commissioners to include in their report an estimate of the number of taxables and the number of square miles which would still remain in such township after the said part shall have been taken out, and to further certify to said court that, in their opinion, or in the opinion of a majority of them, the said part can be taken from said township without serious injury to the remaining part of said township.

Sec. 3, Act of May 13, 1879, P. L. 52.

12. The court of quarter sessions aforesaid shall have power to adjust the indebtedness of the said townships cut by the new county line, and of the townships included within this act, incurred prior to the erection of the new county, or prior to the consolidation and establishment of a new township under this act, in such manner that only the property within the old territorial limits of each township shall be liable for such indebtedness.

Sec. 4, Act of May 13, 1879, P. L. 52.

13. The compensation of the said election officers, shall be two dollars a day for each day necessarily employed in their said duty; and the costs of holding said election and giving said notices shall be paid by the county in which the proceedings were had; the compensation of the said commissioners shall be the same as that now paid to road viewers under existing laws, and (to) be paid in the same manner.

Sec. 5, Act of May 13, 1879, P. L. 52.

Road viewers are now appointed and their pay fixed by the Act of June 23, 1911, P. L. 1123.

(c) Erected from Territory Detached from a Borough.

14. When said court shall make a decree changing the limits of any borough, by detaching therefrom any portion of the territory included therein, it shall be the duty of said court to make a further decree, directing that the portion so detached shall constitute (a new borough,) a new township, or become part of an adjacent (borough,)

township or townships, as to said court may seem for the best interests of the several (boroughs,) townships (and school districts) affected thereby, and the residents of territory, so detached, and in case of the erection of a new (borough or) township, (or school district,) shall order and direct a special election to be held for the election of proper officers therefor, as provided by law: (Provided, That no new borough shall be created, unless the intention to do so has been set forth in the original petition filed, or after thirty days' notice, in such manner as the court may direct.)

Sec. 4, Act of June 1, 1887, P. L. 285.

This act is a supplement to the Act of June 11, 1879, P. L. 150.

This section was repealed as far as it related to boroughs by the Act of May 14, 1915, P. L. 312, which provides (Chapter III, Article 1, Section 7): "Whenever the court shall make a decree changing the limits of any borough as provided by the foregoing sections of this article, by detaching therefrom any portion of the territory included therein, the court shall make a further decree directing that the portion so detached shall constitute a new borough, *a new township*, or become part of an adjacent borough, as to the court may seem best." Primarily this section is borough law, but is herein inserted because it indirectly provides a method by which a new township may be erected.

15. Whenever proceedings shall have been or shall hereafter be commenced in any court of this Commonwealth for the purpose of changing the limits of any borough, by annexing thereto any adjacent tracts of land, or detaching therefrom any territory included therein, and the same shall have been approved by the grand jury to which the application shall have been submitted, it shall be the duty of said court, before entering the decree confirming the same, to appoint an auditor, who shall ascertain the existing liabilities of the several boroughs, townships and school districts, which may be affected by the said change of limits, the amount and value of the property owned by each, and the amount and value of the property passing to or from each borough, township or school district, and the assessed valuation of all property liable to taxation for borough, township or school purposes, as shown by the last annual assessment in each of said boroughs, townships and school districts, and within the limits of the part annexed to or detached from said borough, and shall report the same to said court, with the form of a decree adjusting the liabilities for all indebtedness and the value of property held or acquired by each justly and equitably upon said borough, township and school district, respectively; and said court shall be authorized to direct the amounts that shall be paid one to the other, and the time and mode of payment, and, if necessary to a proper and just adjustment of the same, may order and direct a special tax to be levied, upon the property so annexed to or detached from said borough, for



the payment of so much of the indebtedness as may be awarded against it, and direct how the same shall be assessed and collected.

Sec. 1, Act of June 1, 1887, P. L. 285.

This Act is a supplement to the Act of June 11, 1879, P. L. 150.

This section was repealed so far as it related to boroughs by the Act of May 14, 1915, P. L. 312.

16. Said court shall, at the time of making such appointment of an auditor, direct notice to be given of the time and place of meeting of the auditor and of the time of making his report and of the hearing thereon, in such manner and for such time as it may deem necessary and proper to give full notice to all parties interested, and shall make such other and further orders as may, to it, seem meet and proper.

Sec. 2, Act of June 1, 1887, P. L. 285.

This Act is a supplement to the Act of June 11, 1879, P. L. 150.

This section was repealed so far as it related to boroughs by the Act of May 14, 1915, P. L. 312.

17. Upon making the decree hereinbefore provided, the same shall be conclusive upon all parties interested, and the said court shall have power to enforce the same by appropriate orders and decrees, and by attachment of all public officers refusing to obey the same, and to punish such disobedience, by fine and imprisonment, or either, at the discretion of the court.

Sec. 3, Act of June 1, 1887, P. L. 285.

This Act is a supplement to the Act of June 11, 1879, P. L. 150.

This section was repealed so far as it related to boroughs by the Act of May 14, 1915, P. L. 312.

#### (d) Division of Townships.

18. In proceedings to divide any township in this commonwealth, it shall be the duty of the court of quarter sessions of the proper county, when a return has been made, by commissioners appointed under the provisions of the act to which this is a supplement, favorable to a division, to order a vote of the qualified electors of said township to be taken on the question of a division thereof.

Sec. 1, Act of March 14, 1857, P. L. 93.

This is a supplement to Sections 13 and 14 of the Act of April 15, 1834, P. L. 537, supra Sections 1 and 2. For the jurisdiction of the court of quarter sessions and additional procedure to put this and Sections 19, 20 and 21 into operation see Sections 13 and 14, Act of April 15, 1834, P. L. 537, and Section 1, Act of April 26, 1854, P. L. 489, supra Sections 1, 2 and 3. The Act of April 28, 1899, P. L. 104 contains no provision which is inconsistent with or repugnant to the provisions of this section or its supplements; nor is there anything in the nature of a township of the first class which prevents its division in the mode prescribed by general law: *Stowe Township Division*, 23 *Super. Ct.* 285.

19. It shall be the duty of the said courts, upon the return being made to them as aforesaid, to fix a day certain upon which the election officers of the township proposed to be divided, shall hold an election at the place fixed by law for holding township elections, and to be governed therein by the several laws of this commonwealth relating to township elections. And it shall be the duty of the constable of said township, or if there be no constable, then one of the supervisors, to give at least fifteen days' notice of the time and place (and) of holding said election, by posting not less than six written or printed handbills in the most public places in said township.

Sec. 2, Act of March 14, 1857, P. L. 93.

This is a supplement to Sections 13 and 14, Act of April 15, 1834, P. L. 537, *supra* Sections 1 and 2.

20. The ballots to be deposited by the electors, shall have written or printed on the outside thereof the word "division," and on the inside the words "for division," or "against division."

Sec. 3, Act of March 14, 1857, P. L. 93.

This is a supplement to Sections 13 and 14, Act of April 15, 1834, P. L. 537, Sections 1 and 2.

As to the form of the ballot see notes to section 6 *supra*.

21. It shall be the duty of the officers of said election, after the polls have been closed agreeably to law, to count the ballots, and certify, within five days thereafter, the number of votes for or against a division, to the clerk of the court of quarter sessions of the proper county, who shall, after filing the said returns in his office, lay the same before the said court at the next sessions. And if it shall appear that a majority of the votes so taken are "for a division," the said court shall thereupon order and decree a division of the said township, agreeably to the lines marked out and returned by the commissioners; but if a majority of votes have been "against a division" no further action shall be had upon such proceedings.

Sec. 4, Act of March 14, 1857, P. L. 93.

This is a supplement to Sections 13 and 14, Act of April 15, 1834, P. L. 537, *supra* Sections 1 and 2.

22. Whenever hereafter the owners of twenty-five per centum of the assessed valuation of the real estate of a township, already erected in any county in this Commonwealth, shall make application by petition to the court of quarter sessions of the proper county, setting forth that the convenience of the inhabitants of such township will be promoted by a division thereof, and shall in said petition accurately describe the proposed division line, by courses and distances, or natural marks, if any, and accompany the same with a plot or draft showing the existing lines of the township proposed to be di-



vided, and the proposed division line, it shall be the duty of the court to order a vote of the qualified electors of said township to be taken, on the question of such division, upon a day certain to be fixed by the court, to be held by the election officers of the township proposed to be divided, at the place fixed by law for the holding of township elections, and to be governed by the several laws relating to township elections. And it shall be the duty of the constable of said township, or, if there be no constable, then of one of the supervisors, to give at least fifteen days' notice of the time and place of the holding of said election, by posting not less than ten hand-bills, written or printed, in the most public places in said township.

Sec. 1, Act of April 22, 1905, P. L. 288.

The Act of April 28, 1899, P. L. 104, contains no provision which is inconsistent with or repugnant to the provisions of this section or its supplements; nor is there anything in the nature of a township of the first class which prevents its division in the mode prescribed by the general law: *Stowe Township Division*, 23 *Super Ct.* 285.

23. The ballots to be deposited by the electors shall have written or printed on the outside thereof the word "division," and on the outside (inside) the words "for division" or "against division," and it shall be the duty of the officers of said election, after the polls have been closed, to count the ballots, and certify, within two days thereafter, the number of votes for and against division, to the clerk of the court of quarter sessions of the proper county; and shall file in the office of said clerk the ballots cast at said election; and it shall be the duty of the said clerk to lay said returns and ballots before the said court, at the next session held after the filing, as aforesaid; and if it shall appear that the majority of the votes so taken are "for division," the said court shall thereupon order and decree a division of the said township agreeably to the lines set forth in the said petition; but if a majority of votes have been "against division," no further action shall be had upon such proceedings: Provided, however, That if there is any difficulty in locating the division line, described in the petition, upon the ground, the court may appoint commissioners for that purpose; and that no proceeding under former laws for the division of any township shall be a bar to a proceeding under this act.

Sec. 2, Act of April 22, 1905, P. L. 288.

24. From and after the passage of this act, the pay of (viewers, reviewers, and re-reviewers of roads and bridges, commissioners of roads, and of) commissioners appointed to divide townships (and run township lines, and to divide boroughs into wards, and townships into election districts, and to establish or re-establish township division lines,) in the several counties of this Commonwealth, shall be three dollars (\$3.00), and the pay of surveyors or artists, for that

purpose, shall be five dollars (\$5.00), for every day necessarily employed in the duties of their office, and five cents per mile for each mile necessary (necessarily) traveled in the discharge of their duties. And the same shall be paid by the proper county in all cases, at the time of the session or term of court to which their report is rendered and filed, and the petitioners asking for their appointment shall pay the same amount into the county treasury in all such cases as the court by order may direct; and the court shall require said petitioners to file a bond, together with their petition, in a sufficient sum to secure the payment of the same, when the same is concluded.

Sec. 1, Act of April 4, 1907, P. L. 44.

This Act supplies the Act of May 13, 1874, P. L. 138 as amended by the Acts of May 26, 1893, P. L. 144 and June 25, 1895, P. L. 284.

This Act was repealed so far as it related to boroughs by the Act of May 14, 1915, P. L. 312.

25. From and after the passage of this act, chain carriers employed at the survey of road views and in the division of townships (and running township lines,) shall be entitled to one dollar and fifty cents (\$1.50) per day, to be paid in same manner as road viewers and surveyors of same are now paid.

Sec. 1, Act of May 8, 1876, P. L. 136.

This Act supplements the Act of May 13, 1874, P. L. 138.

26. Whenever a new township has been, or may hereafter be erected, whether by a division of one township (or by uniting parts of two or more adjoining townships, and whenever a borough has been or may hereafter be erected out of any township, or parts of adjoining townships,) the court of common pleas of the proper county, sitting in equity, shall have power, upon the application of the proper authorities of said (borough) township or townships, or either of them, by a suit or suits in equity, to adjust all matters of indebtedness between the said old township or townships, and the said new township (or borough;) and in the execution of any decree in any such suit or suits, the proper officers of the township liable to pay shall have power to levy separate rates of taxation, if necessary, on the said parts of townships, so erected into one.

Sec. 1, Act of April 12, 1866, P. L. 109.

Section 2 of this Act repeals Section one of the Act of May 1, 1861, P. L. 539.

This section was repealed so far as it related to boroughs by the Act of May 14, 1915, P. L. 312.

27. Similar proceedings may be had in case of the division of any township, or upon a change of the boundaries of any township or townships.

Sec. 2, Act of May 1, 1861, P. L. 539.

The value of this section so far as it relates to the division of townships, is questioned. Section one of this Act provided a method for the adjustment of indebtedness "whenever a new township was erected by the division of a township." However Section one was repealed by Section 2 of the Act of May 1, 1866, P. L. 109. Section one of this Act of 1866, supra Section 26, provides a method for the adjustment of indebtedness where a township is divided and would seem to supply this Section.

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## II.

### TOWNSHIP LINES AND BOUNDARIES AND ANNEXATION OF TERRITORY.

#### (a) Township Lines and Boundaries.

28. Whenever any township, (borough or city) is bounded by the nearest margin of any navigable stream of this Commonwealth and the opposite township, borough or city, as the case may be, is also bounded by the nearest margin of the same stream, the middle of such stream shall be deemed and taken to be the boundary between such townships, boroughs or cities, as the case may be.

Sec. 1, Act of May 24, 1887, P. L. 203.

This section was repealed so far as it related to boroughs by the Act of May 14, 1915, P. L. 312.

29. The several courts of Quarter Sessions, shall have authority within their respective counties, (to erect new townships, to divide any township already erected, and) to alter the lines of any two or more adjoining townships, so as to suit the convenience of the inhabitants thereof, and to cause the lines or boundaries of townships to be ascertained and established.

Sec. 13, Act of April 15, 1834, P. L. 537.

30. Upon application by petition to a court of Quarter Sessions, for the purpose of (erecting a new township or) altering the lines of any township, or of ascertaining and establishing the lines or boundaries of any township, the said court shall appoint three impartial men, if necessary, to inquire into the propriety of granting the prayer of the petition, and it shall be the duty of the commissioners so appointed or any two of them to make a plot or draft of (the township proposed to be divided, and the division line proposed to be made therein or of the township proposed to be laid off, or of) the lines proposed to be altered of two or more adjoining townships, or of the



lines proposed to be ascertained and established, as the case may be, if the same cannot be fully designated by natural lines or boundaries, all which they or any two of them shall report to the next court of Quarter Sessions, together with their opinion of the same, and at the term after that at which the report shall be made, the court shall take such order thereupon as to them shall appear just and reasonable.

Sec. 14, Act of April 15, 1834, P. L. 537.

31. In all cases of proceedings under the fourteenth section of the act to which this is a supplement, for any of the purposes therein mentioned, the respective court shall direct a second commission or review, for the same purposes on the petition of a majority of the voters of the township or townships affected by said proceedings: *Provided*, That such petition shall be presented to the court at or before the second term thereof, after the final confirmation of the report of the first commission or review.

Sec. 1, Act of April 26, 1854, P. L. 489.

This act supplements the Act of April 15, 1834, P. L. 537.

32. That from and after the passage of this act, the pay of (viewers, reviewers, and re-reviewers of roads and bridges, commissioners of roads, and of) commissioners appointed to (divide townships and) run township lines, (and to divide boroughs into wards, and townships into election districts, and to establish or re-establish township division lines,) in the several counties of this Commonwealth, shall be three dollars (\$3.00), and the pay of surveyors or artists, for that purpose, shall be five dollars (\$5.00), for every day necessarily employed in the duties of their office, and five cents per mile for each mile necessary (necessarily) traveled in the discharge of their duties. And the same shall be paid by the proper county in all cases, at the time of the session or term of court to which their report is rendered and filed, and the petitioners asking for their appointment shall pay the same amount into the county treasury in all such cases as the court by order may direct; and the court shall require said petitioners to file a bond, together with their petition, in a sufficient sum to secure the payment of the same, when the same is concluded.

Sec. 1, Act of April 4, 1907, P. L. 44.

This act supplies the Act of May 13, 1874, P. L. 138, as amended by the Acts of May 26, 1893, P. L. 144 and June 25, 1895, P. L. 284. This act was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

33. From and after the passage of this act, chain carriers employed at the (survey of road views and in the division of townships and) running township lines, shall be entitled to one dollar and fifty

cents, (\$1.50) per day, to be paid in the same manner as road viewers and surveyors of same are now paid.

Sec. 1, Act of May 8, 1876, P. L. 136.

This is a supplement to the Act of May 13, 1874, P. L. 138.

34. The several courts of Quarter Sessions shall have authority within their respective counties to cause disputed lines and boundaries between two or more (cities, boroughs or) townships, (cities and boroughs,) townships and boroughs, or cities and townships, to be ascertained and established.

Sec. 1, Act of June 3, 1893, P. L. 284.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312, which provides (Chapter III, Article II, section 2), "The court of quarter sessions, upon petition may ascertain and establish disputed boundaries between two or more boroughs, between boroughs and cities, or between boroughs and townships."

35. Upon application by petition to the court of quarter sessions for the purpose of ascertaining and establishing disputed lines or boundaries between two or more (cities, boroughs or) townships, (cities and boroughs,) townships and boroughs, or cities and townships, the court shall appoint three impartial men, one of whom shall be a competent surveyor who, after having giving notice as directed by court, shall view the said lines or boundaries; and it shall be the duty of the said commissioners so appointed, or any two of them, to make a plot or draft of the lines proposed to be ascertained and established, if the same cannot be fully designated by natural lines or boundaries, all of which they, or any two of them, shall report to the next court of quarter sessions, together with their opinion of the same, and at the term after that at which the report shall be made, the court shall take such order thereupon as to it shall be just and reasonable: Provided, That upon petition a review may be ordered by said court: And provided further, That an appeal may be taken from the decision of said commissioners of view or review and the question of fact in dispute determined by a feigned issue to be framed by the court after the manner of framing feigned issues under existing laws, to be certified to the court of common pleas of the proper county.

Sec. 2, Act of June 3, 1893, P. L. 284.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312, which provides, (Chapter III, Article II, sections 3 and 4); "Upon such petition, the court shall appoint as commissioners three impartial men, one of whom shall be a surveyor. After giving notice to parties interested, as directed by the court, they shall view the disputed boundaries. The commissioners, or any two of them, shall report to the next succeeding term of court, which report shall

contain their recommendations and be accompanied with a plot of the proposed boundary, if the same cannot be fully designated by natural lines.

"Any person interested may petition the court for a review or may except to the report of the commissioners. When matters of fact are in dispute, the court may frame an issue and certify the same for trial to the court of common pleas."

36. The commissioners so appointed shall each receive three dollars per day, except the surveyor, who shall receive five dollars per day, and mileage at the rate of ten cents per mile for every mile necessarily traveled, for each and every day necessarily employed while in the performance of their duties, to be paid out of the county funds.

Sec. 3, Act of June 3, 1893, P. L. 284.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312, which provides, (Chapter III, Article II, section 5), "The commissioners shall each receive three dollars per day, except the surveyor, who shall receive five dollars per day, for each day necessarily employed in the performance of their duties, and mileage at the rate of ten cents per mile for each mile necessarily traveled."

37. Whenever a line is finally established by virtue of this act the court shall cause the same to be marked with stone monuments to be placed at intervals, not exceeding fifteen hundred feet from each other, the expense thereof to be reasonable and to be first approved by the court, and to be borne equally by the municipalities interested, and the court shall compel the payment of the same according to law.

Sec. 4, Act of June 3, 1893, P. L. 284.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312, which provides, (Chapter III, Article II, section 6), "Whenever a boundary is established pursuant to the preceding sections of this article, the court shall cause the same to be marked with stone monuments, placed at intervals not exceeding fifteen hundred feet, and the expense of establishing said boundary and the placing of said monuments, when approved by the court, shall be borne equally by the municipalities and townships interested."

38. Whenever a new township has heretofore been or may hereafter be erected, whether by a division of one township or by uniting parts of two or more townships into one, the court of common pleas of the proper county, sitting in equity, shall have power, upon application of the proper supervisors, poor masters or school directors of any township or school district, by a suit or suits in equity, to adjust the taxes, debts and expenses for road, school and poor purposes between the said old township or townships and the said new township; and in the execution of any decree in any such suit or suits, the proper officers of the township liable to pay shall have power to levy sepa-



rate rates of taxation, if necessary, on the said parts of townships so erected into one.

Sec. 1, Act of May 1, 1861, P. L. 539.

This section while not applying to a change of township boundaries and being repealed by the Act of April 12, 1866, P. L. 109, is here inserted to clarify section 2, of this act of 1861, *infra* sec. 39.

39. Similar proceedings may be had in case of the division of any township, or upon a change of the boundaries of any township or townships.

Sec. 2, Act of May 1, 1861, P. L. 539.

"Similar proceedings" see *supra* sec. 38.

#### (b) Annexation of Territory.

40. The court of quarter sessions of the peace of the proper county shall have power to change the limits of any incorporated borough within this Commonwealth, by detaching therefrom any portion of the territory embraced within said limits and by annexing the same to any contiguous township or townships, in accordance with the provisions of this act.

Sec. 1, Act of May 28, 1907, P. L. 264.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312, which provides, (Chapter III, Article I, section 20), "The court of quarter sessions, upon petition, may change the limits of any borough by detaching territory therefrom and annexing the same to a contiguous township or townships."

41. The application to the said court, for the purpose of diminishing the territory of a borough and annexing the same to any contiguous township or townships, shall be in writing, and shall be signed by a majority of the freeholders residing within the limits of said borough; or, an application can be made by a freeholder or freeholders, where the dividing line between a borough and a township shall separate lands of the said freeholder or freeholders into two or more parts. The application shall contain a proper description of the portion or portions of borough territory proposed to be detached, showing the name or names of the contiguous townships, exhibiting the courses and distances thereof, in words at length, and shall be accompanied by a plot or draft of the same.

Sec. 2, Act of May 28, 1907, P. L. 264.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312, which provides, (Chapter III, Article I, section 21), "The petition shall be signed by a majority of the freehold residents of the borough, except where the dividing line between a borough and a township shall separate the lands of any person in which case the petition may be made by any freeholder whose lands are so divided. The petition shall contain the names of the contiguous township or town-

ships to which the territory is proposed to be annexed, and shall set forth a description, and be accompanied with a plot, showing the courses and distances of the boundaries of such township or townships before and after the proposed change of limits."

42. Upon presentation of said application to the court, the court shall order the same to be filed, and shall direct notice thereof to be given to the supervisors of the townships affected thereby, and to the president or secretary of council of said borough, and shall fix a time for hearing the matter; and the notice herein provided shall be served at least twenty days prior to the day of hearing; and if said court, after a full investigation of the case, believe it is expedient to grant the prayer of the applicant or applicants, it shall grant the same, and enter decree accordingly; and the said application and decree shall be forthwith recorded in the recorder's office of the proper county, at the expense of the applicant or applicants; and the court shall, at the same time, further decree to what adjacent township or townships the territory so detached shall be annexed, as the said court may deem for the best interests of the several districts affected thereby, or the interest of the applicant or applicants where lands may be divided into two or more parts; and from and after the entry and recording of said decree and application, the boundaries and limits of any such borough and of the adjacent township or townships shall be deemed and taken as fixed in said decree of court.

Sec. 3, Act of May 28, 1907, P. L. 264.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312, which provides, (Chapter III, Article I, section 22), "Upon its presentation the court shall order the petition filed and shall fix a time for hearing. Notice of the filing of the petition shall be given to the supervisors of the townships and to the secretary of the borough and the president of council, at least twenty days prior to the date of hearing. If the court shall determine in favor of the proposed detachment of territory, it shall state in its decree to what adjacent township or townships the territory so detached shall be annexed. The petition and decree shall be recorded in the office for the recording of deeds of the county, at the expense of the petitioners, and thenceforth the boundaries of the borough and of the adjacent township or townships shall be as decreed by the court."

43. Whenever, under the provisions of this act, the court shall decree the alteration of the boundaries of any township (or borough,) the court shall appoint an auditor, who shall give such notice as the court shall direct to all parties in interest; and, after having heard the same, and made such investigation as may be necessary therefor, shall report to the court the total valuation of the several townships or boroughs and school districts affected by the alteration decreed, the assessed valuation of such portion of any township, borough, or school district as shall by said alteration be cut off from one and added to another township, borough or school district, and also the



amount of the indebtedness of the several townships, boroughs, or school districts affected by such alteration, and the value of all property that shall be transferred by reason of such alteration in boundaries from one township, borough, or school district to another; and shall also report a form of decree, making such an adjustment of the indebtedness and property of the several townships, boroughs, and school districts as shall be equitable and just, which report and decree shall be confirmed nisi by the court, the confirmation to become absolute in ten days, unless exception be filed thereto or an appeal be taken by some of the parties in interest, and whenever such decree shall become final, either without appeal or after appeal, the court shall enforce the same in such manner as decrees in equity are enforced.

Sec. 4, Act of May 28, 1907, P. L. 264.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312, which provides, (Chapter IV, Article I, sections 17, 18 and 19), "Whenever under the provisions of chapter three, article one, sections twenty to twenty-four, inclusive, of this act, the court shall decree the detachment of territory from a borough, the court shall appoint an auditor, who shall give such notice as the court shall direct to all parties in interest."

"The auditor shall hear all parties in interest, make necessary investigation, and report to the court the total valuation for taxation purposes of the boroughs and townships affected, the assessed valuation of the portion detached, the amount of indebtedness of the several boroughs and townships, and the value of all property transferred from the borough to a township or borough. The auditor shall also report a form of decree making such adjustment of the indebtedness of the boroughs and townships affected as he shall deem equitable."

"The report and decree shall be confirmed nisi by the court, and shall become absolute in ten days unless exceptions be filed thereto or an appeal be taken by parties in interest. The costs and expenses of the proceedings shall be paid as the court shall direct."

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### III.

#### CLASSIFICATION OF TOWNSHIPS.

44. WHEREAS, In those more populous townships of the commonwealth, which are in large measure devoted to residential purposes, there is need of a form of municipal government having greater powers than are now possessed by the local governments of townships under existing laws:

Act of April 28, 1899, P. L. 104.

45. For the purpose of legislation, regulating the municipal affairs, the exercise of certain corporate powers, and having respect to the number, character, powers, and duties of certain officers thereof, the townships now in existence, and those to be hereafter created, in this Commonwealth, shall be divided into two classes. Those townships having a population of at least three hundred to the square mile, shown by the United States census, or as ascertained in the manner hereinafter provided, shall be townships of the first class. All other townships shall be townships of the second class.

Sec. 1, Act of May 29, 1907, P. L. 305, amending section 1, Act of April 28, 1899, P. L. 104, as amended by the Acts of May 11, 1901, P. L. 160, and April 1, 1905, P. L. 97.

The Act of April 28, 1899, P. L. 104, had the effect of making all townships in Pennsylvania of the second class, except "those townships having a population of at least three hundred to the square mile, as shown by the United States census," after proceedings taken under the act. All townships are prima facie in the second class, and remain there until proceedings are taken in pursuance of the act to create them townships of the first class: *Travis v. Lehigh Coal & Navigation Co.*, 33 Super. Ct. 203.

46. (a) It shall be the duty of the county commissioners, in every county of the Commonwealth, to ascertain whether any township in the county comes within the conditions hereinbefore set out as constituting a township of the first class; and by proclamation, to be issued prior to the first day of January following the ascertainment of population by the decennial census of the United States, to designate the townships of the first class, if any, within the county; and by proclamation, to be issued prior to the first day of January of each of the intervening years, to designate the townships, if any, which since the last preceding proclamation have been ascertained to come within the said conditions, and to be townships of the first class; and in all townships so designated, the officers provided for by this act shall be chosen at the municipal election then next ensuing, and the township government constituted by this act shall go into force on the first Monday of March then next ensuing. Said proclamation by the county commissioners shall be advertised in two newspapers published in the county.

(b) At any time, not less than one year before the time fixed for taking a decennial census of the United States, whenever the owners of twenty-five per centum of the assessed valuation of the real estate of any of the townships of the second class shall present their petition to the court of quarter sessions of the county, averring that the population of said township has become and is at least three hundred to the square mile, and shall give such security as the court may prescribe for the payment of all costs and expenses which may be incurred in any procedure had upon said petition, the said court

shall appoint a competent commissioner to make an enrollment of the inhabitants of said township, and to report the said enrollment, with the finding of the population of the said township, during the next ensuing term of the said court. Upon the filing of the report of the said commissioner, the same shall be confirmed nisi; said confirmation to become absolute unless excepted to within twenty days thereafter, during which time notice of the said filing and confirmation shall be advertised in a newspaper of said county, once a week for three weeks. If exceptions are filed to the said report within the said period, the court upon consideration thereof, shall confirm the said report or modify the said finding; and thereupon the clerk of the court shall certify to the county commissioners of the county the population of the said township as shown by the said proceedings. The costs and expenses of the said proceedings including a reasonable fee for the said commissioner, shall be paid by the said petitioner, or by the townships, or partly by each, as the court shall direct.

Sec. 1, Act of March 24, 1909, P. L. 56, amending section 2, Act of April 28, 1899, P. L. 104, as amended by the Acts of May 11, 1901, P. L. 160 and April 1, 1905, P. L. 97.

Quaere. Whether the time prescribed by this section for the organization of the township officers is changed by the Act of June 5, 1913, P. L. 424, *infra* section 508.

47. Except so far as modified by the provisions of this act, all existing laws relating to townships shall continue in force until changed, modified or repealed, as to either class of townships, by legislation relating expressly thereto.

Sec. 3, Act of April 28, 1899, P. L. 104.

48. Townships of the second class shall continue to be governed as provided by the laws in force at the date of the passage of this act relating to townships, until the same be changed by legislative enactment.

Sec. 21, Act of April 28, 1899, P. L. 104.

49. At any time, not less than two years before the time fixed for taking a decennial census of the United States, whenever twenty or more freeholders, residing in any of the townships of the first class, shall present their petition to the court of quarter sessions of the county, averring that the said township no longer has a population such as is required by law, and shall give such security as the court may prescribe for the payment of all costs and expenses which may be incurred in any proceedings had upon said petition, the said court shall appoint a competent commissioner to make an enrollment of the inhabitants of the said township and to report the said enrollment, with a finding of the population of the said township,

during the next ensuing term of the said court. Upon the filing of the report of the said commissioner, the same shall be confirmed nisi; said confirmation to become absolute unless excepted to within twenty days thereafter, during which time notice of the said filing and confirmation shall be advertised in a newspaper of said county, in general circulation in the district to be affected thereby, once a week for three weeks. If exceptions are filed to the said report within the said period, the court upon consideration thereof, shall confirm the said report or modify the said finding; and thereupon the clerk of the court shall certify to the county commissioners of the county and to the township commissioners of the said township, the finding as shown by the said proceedings. The costs and expenses of the said proceedings, including a reasonable fee for the said commissioner, shall be paid by the said petitioners, or by the townships, or partly by each, as the court shall direct.

Sec. 1, Act of March 14, 1905, P. L. 36.

50. It shall be the duty of the county commissioners in every county of the Commonwealth, by proclamation to be issued prior to the first day of January of each year, to designate the townships, if any, which since the last preceding proclamation have been ascertained to come within said conditions, and to be townships of the second class; and in all townships so designated, the officers provided by general law for townships of the second class shall be chosen at the township election then next ensuing, and the township government constituted by general law for townships of the second class shall go into force on the first Monday of March, then next ensuing.

Sec. 1, Act of March 14, 1905, P. L. 36.

Quaere. Whether the time prescribed by this section for the organization of the township governments is changed by section 1, Act of June 11, 1915, P. L. 947, *infra*, section 519.

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#### IV.

#### GENERAL POWERS AND DUTIES.

(a) Provisions Relating to Both First and Second Class Townships.

51. The several (counties and) townships in this state shall have capacity as bodies corporate:

I. To sue and be sued as such by the corporate name of (the county of \_\_\_\_\_ or) the township of \_\_\_\_\_, as the case may be.



II. To take and hold real estate within their respective limits, and also personal property: Provided, That such real and personal estate shall be taken and held only for the benefit of the inhabitants of the respective (county or) township, and for such objects and purposes, and none other, as (county or) township rates and levies are now, or hereafter may be, authorized by law to be laid and collected, and for such other objects and purposes as may hereafter be expressly authorized by law.

III. To make such contracts as may be necessary and proper for the execution of the same objects and purposes.

Sec. 3, Act of April 15, 1834, P. L. 537.

52. Any (county, city, town, borough, or other) municipal division of this Commonwealth shall be, and is hereby, authorized and empowered, either independently or in connection with any other county, city, town, borough, or municipal division of this Commonwealth, to provide and appropriate moneys, or convey land to the Commonwealth of Pennsylvania, to assist the Armory Board of the State of Pennsylvania in the erection, wherever deemed most advantageous by the said Armory Board of the State of Pennsylvania, of armories for the use of the National Guard of Pennsylvania; and to furnish water, light, or fuel, either or all, free of cost to the Commonwealth of Pennsylvania, for use in any armory of the National Guard of Pennsylvania, to do all things necessary to accomplish the purposes of the said Armory Board.

Sec. 1, Act of March 15, 1909, P. L. 33.

This act was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

53. Municipalities of this Commonwealth shall have and are hereby given the right of eminent domain for the purpose of appropriating to themselves, for the use of the National Guard of Pennsylvania, such public lands, easements and public property as may be in their possession or control and used or held by them for any other purpose. Such right however shall not be exercised as to any street or highway or wharf, but all other public easements and property may be appropriated and used for the purposes herein provided, any limitation of the use thereof by the municipality, either by donation, dedication, appropriation, statute or otherwise, to the contrary notwithstanding.

Sec. 1, Act of June 26, 1895, P. L. 332.

In view of the decisions in *Dare v. Co.*, Com. 23, Pa. C. C. 646, and *Dreese v. Freed* 42 Pa. C. C. 242, that the term municipality includes a township, this act has been included.

This act was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

54. After the passage of this act the (cities, boroughs and) townships of the Commonwealth are hereby authorized to appropriate moneys for the expenses of Memorial Day services, and to pay the same out of such moneys in their respective treasuries, as are not otherwise appropriated, in the manner appropriations are now made and paid.

Sec. 1, Act of June 25, 1895, P. L. 298.

This act was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

55. It shall be the duty of the supervisor or supervisors of the public roads or highways in every township or district as aforesaid, to cut and destroy in the same manner all such Canada thistles or weeds on or along such roads, and in case of unseated or mountain lands, whenever it shall come to the knowledge of either the supervisor or constable of the existence of any such Canada thistles or weeds thereon, it shall be his duty to notify the owner, or owners, or agents of said lands in writing, giving ten days' notice, to cut and destroy the same as aforesaid, and upon failure to comply at the end of ten days such officer, or any person or persons employed by him, shall proceed in the manner hereinbefore provided, with like fees and compensation, and if any such constable or supervisor shall neglect or refuse to perform his duties as prescribed by this act, he shall be liable to a fine of ten dollars, the same to be used for and applied to the purposes aforesaid, by the party or parties aggrieved or about to be aggrieved by such neglect or refusal.

Sec. 1, Act of April 24, 1885, P. L. 9.

It seems this section would also apply to townships of the first class, see section 3, Act of April 28, 1899, P. L. 104. Supra, section 47. This section should be read in connection with sections one and two of this Act of 1885, which read as follows:

Sec. 1. That from and after the passage of this act it shall be the duty of every person or persons, and of every corporation holding land or lands in any county or counties of this Commonwealth, either by lease or otherwise, on which any Canada thistles or weeds commonly known as Canada thistles may be growing, to cut the same so as to prevent such thistles or weeds from going to seed, and the seed of the same from ripening, and every person or persons, or corporation as aforesaid, who shall or may have land as aforesaid, and who shall neglect or refuse to comply with the provisions of this act, shall forfeit and pay a fine of fifteen dollars to the treasurer of the school district in which such land may be situated, to be recovered the same as debts of like amount are now by law recoverable.

Sec. 2. That if any person, or persons or corporation, so holding lands as aforesaid, on which any Canada thistles or the weeds commonly known as such shall be growing, and likely to ripen seed thereon, shall neglect or refuse to cut and destroy the same so as to prevent the seed thereof from ripening, it shall and may be lawful for any person or persons who may consider themselves aggrieved or about to be injured by such neglect or

refusal, to inform by written notice any constable or supervisor of the township or district, in which the said Canada thistles or weeds may be growing, whose duty it shall then be to give five days' notice in writing to such person or persons or corporation to cut and destroy such thistles or weeds, and on their neglect or refusal to cut and destroy the same at the end of five days, it shall be the duty of the officer giving such notice to enter upon such premises, with such other person or persons as he may employ, and cut down and destroy such Canada thistles, and the said officer or other persons so employed, shall be entitled to recover from such person or persons or corporation owning or holding land as aforesaid, compensation at the rate of two dollars and fifty cents per day, and the officer serving such notice shall likewise be entitled to a fee of fifty cents, together with six cents mileage for each mile, circular, necessarily traveled, to be recovered as debts of like amount before any justice or court in said counties.

(b) Provisions Relating Exclusively to First Class Townships.

56. All the corporate power, authority and franchise of the township shall be vested in and exercised by the board of township commissioners; and the said board shall have particularly the following powers:

Sec. 7, Par. 1, Act of April 29, 1899, P. L. 104.

57. To open, grade, construct and pave all public highways in the township which shall or may be at any time laid out by lawful authority, and to keep the same in good order and repair. To construct footways along said highways, and to establish lights thereon where it may be deemed expedient to do so. To accept the dedication of public highways and alleys: Provided, That when, any one or more tax payers of any township or road district of the first class shall apply to the court of quarter sessions of the county in which said township or road district is situate, for the right to furnish all the material and labor necessary for opening, making, amending and repairing the public highways and bridges of said township or road district,—under the provisions of an act, entitled “An act enabling the taxpayers of townships and road districts to contract for making, at their own expense the roads, and paying salaries of township or road district officers, and thereby preventing the levy and collection of road tax therein,” approved June twelfth, one thousand eight hundred and ninety-three—the township commissioners of such township be and are hereby authorized and required to enter into such contract, under the directions of the court of quarter sessions of the county in which said township is situate, under the provisions of said act, in the same manner as the supervisors have heretofore been authorized and directed to enter into such contracts.

Sec. 1, Act of May 24, 1901, P. L. 297, amending section 7, clause 1, Act of April 28, 1899, P. L. 104. See *infra* section 153 and annotations to said section.



58. On application of the owners of a majority of frontage along any highway, or portion thereof, in any said township, to cause the sidewalks along said highway and curbed at the expense of the abutting property.

Sec. 7, clause 2, Act of April 28, 1899, P. L. 104.

59. From time to time to establish and construct sewers and drainage, locating the same as far as practicable and within the lines of such of the public roads of the township as may to the commissioners seem advisable, and to permit, when necessary for the public health, to require, adjoining property owners to connect with and use the same; and to connect, paying in addition to the cost of making such sewer, such monthly or annual rate as shall be prescribed by ordinance, which shall constitute until paid a lien against the property for connecting with such system, and the amount thereof may be recovered by due process of law.

Where it shall be reasonably impracticable, in the judgment of the commissioners, in any part of such system to carry such drains along the lines of public roads, it shall be lawful for the commissioners to locate and construct so much of the system as may be necessary through private lands.

And the commissioners shall make the necessary provision for the disposition of the sewage and drainage within, or for the same beyond, the limits of the township, and to this end they are hereby authorized to enter into contracts with other townships and other corporations or persons, and to acquire such lands within the township as may be necessary, not exceeding, however, in any one place, one acre, nor exceeding an aggregate of three acres.

Part of Sec. 1, Act of May 24, 1901, P. L. 294, amending section 59 of the Act of April 28, 1899, P. L. 104.

For powers and procedure relating to sewers, see *infra* sections 324 inclusive.

60. To make regulations respecting pig pens, slaughterhouses, manure pits, drains, cesspools and manufactories that may be a nuisance, to abate nuisances prejudicial to public health and public morals, and to collect the cost of such abatement from any person responsible for having created the nuisance. Also to regulate the running at large of animals.

Sec. 7, clause 4, Act of April 28, 1899, P. L. 104.

61. To establish and maintain a night watch and police force, and to define the duties of the same. To provide for the purchase of a lockup or watchhouse, for the detention and care of vagrants and persons duly arrested, until they can be released.



a magistrate for hearing, and committed to prison or discharge. To arrest and confine or to set to work on the roads or elsewhere vagrants found in said township, and generally to take all needful means for securing the safety of persons and property within the township. To purchase and maintain engines for the extinguishing of fire, and to make rules and regulations for the management of same, and to enter into contracts with any person or corporation to supply water for fire protection for a period not exceeding two years: Provided, This right shall not be exclusive as against any other water company, nor as against the right of such municipality to erect, maintain and operate its own water works. To regulate and prohibit shows, circuses and public entertainments of all sorts.

Sec. 1, Act of July 9, 1901, P. L. 627, amending section 7, clause 5, of April 28, 1899, P. L. 104.

For other provisions relating to township police, see sections 593, 594 and 595 *infra*. For other provisions relating to water supply see *infra* sections 325, to 337, inclusive. For other provision relating to fire companies, see *infra* sections 68 and 69.

62. To levy for township purposes an annual tax of not more than one per centum.

Sec. 7, clause 6, Act of April 28, 1899, P. L. 104.

For provisions relating to the levy and collection of taxes see *infra* sections 353 to 375, and 402 to 487 inclusive.

63. To borrow money and to issue evidences of indebtedness therefor: Provided, That the total amount of indebtedness so created shall not exceed two per centum of the county valuation of the property within the township without the assent of the electors of the township, and that the rate of interest shall not exceed five per centum. But no indebtedness shall be incurred or expenditure authorized, except in accordance with the ordinances of the board, to authorize the expenditure of more than one hundred dollars. A special resolution of the board shall be necessary.

Sec. 7, clause 7, Act of April 28, 1899, P. L. 104.

64. To adopt by-laws and ordinances prescribing the manner in which the above powers shall be carried out, and generally regulating the affairs of the township within the powers hereby conferred. All such ordinances shall be published at least twice in a newspaper published in the township, or, if there be no newspaper, advertisement or publication in such other manner as may be designated by ordinance.

Sec. 7, clause 8, Act of April 28, 1899, P. L. 104.

65. To prescribe fines and penalties, not exceeding fifty dollars in any instance, for the violation of township ordinances, which fines and penalties may be collected by suit, to be brought in the name of the township.

of the township, before any justice of the peace or magistrate, in like manner as debts of like amount may be sued for by existing laws.

Sec. 1, Act of April 19, 1905, P. L. 221, amending section 7, clause 9, Act of April 28, 1899, P. L. 104.

66. The board of township commissioners in every township of the first class shall have power to provide, by contract or otherwise, for the collection and removal of ashes and garbage accumulating therein.

Sec. 1, Act of June 25, 1913, P. L. 561.

67. Every township of the first class of the Commonwealth shall have power to pass ordinances taxing the owners and harborers of dogs, and providing for the destroying of all dogs found at large contrary to any ordinance.

Sec. 1, Act of May 14, 1915, P. L. 520.

68. The board of township commissioners in every township of the first class shall have power to take measures for the extinguishment of fires, either by making annual appropriations towards the maintenance of one or more fire-companies in such township, or in such other manner as said board of commissioners may deem proper. And the board shall have power to ordain rules and regulations for the government of such fire-companies and their officers, and to regulate the method to be followed in the extinguishment of fire.

Sec. 1, Act of May 1, 1913, P. L. 144.

For other provision relating to fire companies see *supra* section 61 and *infra* section 69.

69. The board of township commissioners of the several townships of the first class of this Commonwealth shall have the right to levy a tax for the purpose of building and maintaining a suitable place for the housing of engines, hose-harts, and other apparatus for the extinguishment of fire. Said building to be under the care of said board of township commissioners: Provided, That said board of township commissioners of said townships of the first class shall not erect or maintain said buildings without obtaining the assent of the electors thereof, expressed by vote at an election to be held at the place, time, and under the same regulations, as provided by law for the holding of municipal elections; and it shall be the duty of the judges, inspectors, and clerks of such elections to receive tickets either written or printed, from electors qualified under the Constitution of this State to vote in such district, labelled on the outside "Fire-engine house," and on the inside the words, written or printed, "For fire-engine house" or "Against fire-engine house," to be deposited in a box provided for that purpose. In receiving and counting and in making returns of the votes cast, the inspectors, judges

and clerks of said election shall be governed by the laws of this Commonwealth regulating municipal elections; and the vote shall be counted by the court as is now provided by general laws governing municipal elections: Provided, the constables of said townships, by direction of the board of township commissioners, shall also issue proclamation, ten days prior to date of said municipal election, that the qualified electors will vote "For or against building a fire-engine house."

Sec. 1, Act of March 18, 1909, P. L. 40.

69a. The board of commissioners, in every township of the first class in this Commonwealth, may, whenever and wherever they may deem it expedient to do so, establish lights on and along State highways and turnpike roads running through such township: Provided, however, That no lights shall be established upon State highways and turnpike roads under the jurisdiction of the State Highway Department until a permit has first been obtained from the State Highway Commissioner.

Sec. 1, Act of July 7, 1913, P. L. 671.

(c) Provisions relating Exclusively to Second Class Townships.

70. The corporate powers of the several (counties and) townships shall be exercised by the (commissioners or) supervisors, thereof, respectively.

Sec. 4, Act of April 15, 1834, P. L. 537.

71. The road supervisors of any township of the second class in this Commonwealth are hereby authorized and empowered, on the petition of the owners of a majority of the lineal feet frontage along any highway, or portion thereof, in any village within said township, to enter into contract with water companies for the placing of fire-hydrants along said highway, for the protection of property from fire.

Sec. 1, Act of May 25, 1907, P. L. 231.

This power of the road supervisors is vested in the township supervisors, see section 20, Act of July 22, 1913, P. L. 915, *infra* section 537.

For the power to levy a tax for the purposes expressed in this section, see subject of taxation, *infra* sections 384 and 385.

72. The township supervisors of any township of the second class in this Commonwealth are hereby authorized and empowered, on the petition of the owners of a majority of the lineal feet frontage along any highway, or portion thereof, in any village within said township, to enter into contract with electric, gas, or other lighting companies,



light and illuminate the streets, highways, and other public places and villages with electric light, gas light, or other illuminant.

c. 1, Act of May 28, 1913, P. L. 371.

See subject of taxation, *infra* sections 381 and 382 for power to levy a tax to carry out the purposes of this section.

3. The road supervisors of the several townships throughout this Commonwealth are authorized to subscribe for not more than three publications, whose main subject-matter pertains to good roads and road building; such publications to be for the joint use of the road supervisors and the road masters of the proper townships; same to be paid for out of the taxes collected by such townships for road purposes.

c. 1, Act of May 5, 1911, P. L. 165.

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## V.

### EMINENT DOMAIN.

4. In all proceedings hereafter instituted for the condemnation or appropriation of land and property by the exercise of the right of eminent domain, the petition for the appointment of viewers therein shall contain allegations specifying any judgments, mortgages, or other claims (hereinafter designated "liens") which are upon the land and property sought to be appropriated or condemned.

Sec. 1, Act of June 11, 1915, P. L. 942, amending section 1, Act of April 14, 1915, P. L. 122.

5. Testimony shall be taken in said proceedings to ascertain the amounts of said liens, and the dates of the entry of the same, and the amounts of said liens and the dates of entry thereof shall be found as facts by the viewers in said proceedings. Certified lists of liens from the courts of the Commonwealth and the United States shall be prima facie evidence of the existence, dates, amounts, dates of entry, and places of record of said liens, and, unless modified or overcome by oral or documentary evidence, shall be conclusive upon the parties thereto, as to items just specified.

c. 2, Act of April 14, 1915, P. L. 122.

6. Where it appears that liens exist, as aforesaid, which are liens upon property sought to be condemned and appropriated as aforesaid, the report of the facts found as aforesaid shall be made to the court



diction of the proceeding; which report shall be submitted in manner to be regulated by the Supreme Court rule, prescribed, amended, and published from time to time upon the findings in relation to said liens being finally decided by said court having jurisdiction of said proceedings, said court shall make an order directing the payment and distribution of the amount found to be payable as compensation to the parties interested in the property appropriated as aforesaid: Provided, however, that the parties interested shall have the right of appeal from the order of distribution to the Superior and Supreme Courts of the State, as shall be determined by the amount distributed to the parties respectively, in manner now provided by law. Payment in accordance with said order of distribution shall absolutely bind the party making said payment from all claims, of whatever nature, by any person, firm, corporation, or claimant as against the property, when the payment thereof shall be evidenced by a receipt on record in said proceedings; and in said receipt and on the face of any claimant may reserve the right to pursue the claim against the said property for any balance due upon his lien against the property or assets of the said owner.

Act of June 11, 1915, P. L. 942, No. 414, amending section 3, Act of 1915, P. L. 122.

The payment of the compensation for land or property appropriated as aforesaid, in accordance with said order of distribution, shall vest in the taker of the land or property appropriated shall vest in the taker in accordance with provisions of the law under which such appropriation is made, and all claims for compensation shall be paid and satisfied as herein provided.

Act of June 11, 1915, P. L. 942, No. 414, amending section 4, Act of 1915, P. L. 122.

In all proceedings arising from the exercise of the right of eminent domain it shall be competent for all witnesses called, when examined, to state their opinion as to the market value of the property before the exercise of the right of eminent domain and as affected by it, and its market value immediately after the exercise of the right of eminent domain and as affected thereby:—

The jury shall state in detail, and costs, all the elements of benefit or advantage which they have taken into consideration in arriving at their

opinion arriving at their opinion as to the market value immediately after the exercise of the right of eminent domain, to add to the opinion of the market value before such exercise the cost of the exercise, and all the elements of benefit or advantage, and to deduct

therefrom all disadvantage or damage, in order to arrive at the market value after such exercise of the right of eminent domain and as affected thereby;

(c) In all proceedings to assess damages or benefits for the opening of any street, alley, or other highway, to take into consideration as one of the elements of advantage or disadvantage the cost of street improvements.

Sec. 1, Act of April 21, 1915, P. L. 159.

79. In all claims for damages against a (county, city, borough, or) township, arising from the exercise of the right of eminent domain, it shall be competent for the party or parties claiming damages to offer in evidence, as a declaration against interest, the value of the property affected as assessed for the purpose of taxation.

Sec. 2, Act of April 21, 1915, P. L. 159.

80. In all cases of the appropriation of land for public use, other than for roads, streets or highways, it shall not be lawful to assess, apportion or charge the whole or any portion of the damage done to or value of the land so apportioned, to, among or against the other property adjoining or in the vicinity of the land so appropriated, nor the owners thereof.

Sec. 1, Act of June 15, 1871, P. L. 391.

This act was repealed so far as it relates to boroughs, by the Act of May 14, 1915, P. L. 312.

81. Viewers, or juries of view, appointed by any court of this Commonwealth to assess the damages and benefits, due to the taking, injury or destruction of private property, in and by the construction or enlargement of any public work, highway or improvement, shall make their reports within a time which said court shall fix when so appointing them: Provided, That if any of the viewers, or juries of view, so appointed, shall for any good and sufficient reason appearing to the court, be unable to file its report within the period so fixed, the said court may, in its discretion, either before or after the expiration of the time fixed, extend the time for the filing of such report to such a time as justice and the circumstances of the case may demand.

Sec. 1, Act of March 18, 1903, P. L. 28.

This act was repealed so far as it relates to boroughs, by the Act of May 14, 1915, P. L. 312.

82. Whenever any report of viewers, or juries of view, appointed by the court of quarter sessions of this Commonwealth to assess damages and benefits for the opening, widening, narrowing or vacating of any road, street or highway, or the taking of private property in and by the construction or enlargement of any public work, high-

way or improvement, shall have been filed, the same shall be confirmed by the court of quarter sessions to which the said report is made, at the expiration of thirty days from the date of the filing thereof, unless exceptions thereto have been filed within such time.

Sec. 1, Act of March 27, 1903, P. L. 83.

83. If no exceptions are filed within the time above prescribed, the report of the viewers, or jury of view, shall be confirmed by the court; and the party or parties to whom an award has been made, and from whose award no appeal has been taken, shall have the right to take such further appropriate legal proceedings as may be necessary and proper to enforce payment of said confirmed award, either in nature of a writ of mandamus, execution, or otherwise.

Sec. 2, Act of March 27, 1903, P. L. 83.

84. When any municipality, (corporation, or company,) having the right to acquire lands, buildings or other property by virtue of the laws of eminent domain, has tendered a bond in sufficient sum to secure the owner or lessee for damages, and the same has been accepted, or, if the acceptance of said bond has been refused, and the same has been filed in and approved by the court, such municipality, (corporation, or company) shall have the right to immediate possession thereof. If the owner, lessee, or occupier shall refuse to remove his personal property therefrom, or give up possession thereof, the petitioner in the proceedings may serve written notice upon such owner, lessee, or his agent, or the occupier, to remove his personal property therefrom, and give up possession of said lands, buildings or other property, within sixty days from the date of the service of said notice.

Sec. 1, Act of June 7, 1907, P. L. 461.

While this act does not name townships specifically its provisions have been incorporated on the belief that the word "Municipality," as used in the act comprehends townships. See *Dare v. Co. Com.* 23 Pa. C. C., 646, and *Dreese v. Freed* 42 Pa. C. C., 242.

85. If the owner, lessee, or occupier of said lands, buildings or other property shall refuse or neglect to remove his personal property therefrom and give possession thereof, upon proof of the service of the notice, specified in section one of this act, in the office of the prothonotary for the county in which said lands, buildings or other property is located, a writ of habere facias possession shall forthwith issue, directing the sheriff to give to the party entitled thereto full and peaceable possession as is provided for by existing laws.

Sec. 2, Act of June 7, 1907, P. L. 461.

## VI.

### ROADS, HIGHWAYS, BRIDGES.

#### (a) General Provisions Relating to Roads and

#### (1) Provisions Relating to Both First and Second Class Townships.

86. Public roads or highways which have been or shall be laid out on a line which divides two townships shall be kept clear and in repair, at the joint and equal charge of the two townships, and if either township shall in any such case neglect more than its due proportion of such charge, it shall be liable to such township to recover from the other township the amount incurred, in an action to be founded on this act.

Sec. 10, Act of June 13, 1836, P. L. 551.

This section seems to comprehend first class townships. See section 47.

See also "*In re Road in Scott and Union Townships and Grafton Boro.*" 17 D. R. 791 to the effect that the court of quarter sessions has jurisdiction under this act to lay out a road in first class townships, and "*Road in Plymouth Township,*" 15 D. R., 558, where the court of quarter sessions held the township commissioners in contempt for failing to open a road laid out by the court under this act.

87. In cases where any public road has been or shall be laid out on the line of two townships if the supervisors of either township shall neglect or refuse to join with the supervisors of the other township in opening or repairing such road, the supervisors of the other township are hereby directed and required to open and repair the said road, and the supervisors so neglecting or refusing shall be liable to the same penalties as if they had neglected or refused to open or repair any public road situate wholly within the respective township.

Sec. 33, Act of June 13, 1836, P. L. 551.

This section seems to comprehend first class townships. See section 47 and note.

The penalties referred to may be:

(a) The fine imposed by section 92, Act of April 15, 1834, P. L. 541, infra section 541.

(b) An indictment under the common law. See "*Edge v. The Commonwealth,*" 7 Pa. 275.

(c) Attachment for contempt of court. See "*Road in Plymouth Township,*" 15 D. R. 558.

88. From and after the first day of June, Anno Domini one thousand eight hundred and eighty-nine, the commissioners or supervisors of roads and highways, in the respective townships of



counties of this Commonwealth shall, upon the petition of one or more persons interested in maintaining grounds as driving parks, grounds, places of holding annual Grand Army or soldiers' or sailors' encampments or reunions or township and general elections, ask for roads across the improved lands of any person or persons, for any public road or highway to said grounds, to go upon the lands described in said petition and view the same, and if said commissioners or supervisors decide that there is occasion for such road, to proper use of said grounds as driving parks, public fair grounds, places for holding annual Grand Army or soldiers' and sailors' campments or reunions, or township and general elections, said commissioners or supervisors shall proceed to lay out said road, to assess such damage as in their opinion the owner or owners of said improved lands will be likely to sustain by the opening of road; which amount of damage, if accepted by the owner or owners of said improved lands, shall be paid by the person or persons whose request said road was laid out, on the payment of such damages, said person or persons at whose request said road was laid out shall have the right to open the same for the use which it was signed. And, if required by the owner or owners of land through which the same is opened, to fence the same and keep said fence in repair.

Sec. 1, Act of May 9, 1889, P. L. 178.

This section seems to comprehend first class townships. See *supra* section 47.

The "Commissioners" referred to are doubtless those provided for in special acts of assembly.

89. In case said owner or owners of the improved lands through which the same is laid out, will not accept of the amount of damage assessed by said commissioners or supervisors, and the owner or owners of said improved land or the person or persons asking for said road, cannot agree upon the amount of damage to be paid by the person or persons asking for said road, said person or persons shall make and execute a bond, with sureties, in double the amount of damage assessed by the said road commissioners or supervisors, and the same shall be submitted to the commissioners or supervisors, and if approved by said commissioners or supervisors, or a majority of them, the same shall be filed with the town clerk and kept by him for the benefit of the owner or owners of said land, through which the said road is laid out. On the approval of said bond and the same as aforesaid, said person or persons asking for said road shall have the right to open and use the same, and after opening said road, the owner or owners of said land have the right to the same proceedings to assess damages against the person or persons who petitioned for said road, as is now provided by law for assessing damages after opening public roads. The petition, together

all proceedings thereon by said commissioners or supervisors, shall be returned to the town clerk of the township, who shall enter the same of record the same as proceedings in other road cases.

Sec. 2, Act of May 9, 1889, P. I. 178.

This section seems to comprehend first class townships. See *supra* section 47.

The "Commissioners" referred to are doubtless those provided for in special acts of assembly.

The office of town clerk was abolished by the Act of June 14, 1911, P. L. 942, and the duties were transferred to the secretary by section 1, of the Act of June 11, 1915, P. L. 947, *infra* section 564.

90. Whenever (the proper authorities of any county or borough, or) the supervisors or commissioners or other legally constituted road authorities of any township or townships, deem it advisable to construct, change or alter any part of any public road under their supervision, within this Commonwealth, and can agree with the property owners affected by such change as to damages, they—the said (county or borough authorities, or) township supervisors or commissioners, or other legally constituted road authorities—are hereby authorized, upon payment of damages agreed upon, to change or alter such part of such public road as contemplated in such agreement, without the formality of a view as heretofore provided by law: Provided, That this authority shall not extend to any change or alteration of any part of any public road, in this Commonwealth, the costs and expenses of which, including damages, shall exceed three hundred dollars: And Provided further, That a petition setting forth the facts, accompanied by a map or draft of such proposed change, shall be presented to the court of quarter sessions for approval before such actual change is made; whereupon the new location, thus approved by the court, shall be taken and deemed to be the public road to all intents and purposes, and the old location shall be taken and deemed to be vacated.

Sec. 1, Act of May 5, 1911, P. L. 123.

This act supplements the Act of June 13, 1836, P. L. 551.

The act was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

The limitation of three hundred dollars, prescribed in the act means the entire costs and does not mean cost to public, reduced by assumption of part of the burden by private citizens. "*Hereford Twp. Road*," 5 *Berks* 91.

This act contemplates that the parties entering into the agreement provided for in the act, shall pay all the damages and necessary expenses. The county is not liable therefor to any extent. "*Middletown Twp. Road*," 22 *Dist. Rep.* 462.

91. Hereafter, in the construction or repair of any highway, it shall be unlawful for the person or persons in charge of such construction or repair, to raise such highway, or permit the same to be

raised or elevated, above the ordinary grade thereof, when a drain or culvert shall be constructed under such highway, or when such highway shall be constructed or repaired over such drain or culvert; Provided, however, That this act shall not be construed, in any manner, to interfere with the work of the State Highway Department in the reconstruction or improvement of any State Highway or State-aid highway, or when a township or townships may be improving a township road under the direction, plans, and specifications of the State Highway Department.

Sec. 1, Act of June 15, 1911, P. L. 982.

91a. The supervisors aforesaid shall have power, and they are hereby enjoined and required, at the expense of the respective townships, to purchase wood, timber, and all other materials necessary for the purpose of making, maintaining and repairing the public roads or highways, and to employ, oversee and direct a sufficient number of laborers to execute promptly and effectually the provisions of the law, and the orders and decrees of the courts having jurisdiction concerning such roads.

Sec. 27, Act of June 13, 1836, P. L. 551.

This section is partly supplied by the provisions relating exclusively to first and to second class townships.

92. The supervisors aforesaid, shall severally have full power and authority within their respective townships, to enter upon any land or enclosure lying near to the said roads, and to dig, gather and carry upon said roads, any stones, sand or gravel found on the same, which they may think necessary for the purpose of making, maintaining or repairing the said roads, when the same cannot be conveniently obtained by contract at reasonable prices, doing no unnecessary damage to the owners of the said lands and repairing any breaches of fences, which they shall make.

Sec. 28, Act of June 13, 1836, P. L. 551.

This section seems to apply to first class townships. See *supra* section 47.

The constitutionality of this section was recognized in *Marshall v. Township of Lower Towanensing*, 15 W. N. C., 235.

93. Whenever the supervisors and the owners of any materials which may be wanted for making, maintaining or repairing the roads aforesaid, cannot agree upon the price to be paid therefor, the value of such materials, shall be estimated by any two of such three persons as may be agreed upon by such supervisors and owners.

Sec. 29, Act of June 13, 1836, P. L. 551.

See note to section 92 *supra*.



4. If the supervisors and owners cannot agree upon any persons to estimate the value thereof, the owner may apply to a justice of the peace residing near the place where such materials were taken, or may be, and thereupon such justice shall appoint three judicious persons, one on the nomination of the supervisors, one other on the nomination of the owner of such materials, and the third upon his own suggestion, and the decision of the persons so appointed or any two of them, shall be entered upon the docket of such justice, and shall be final: Provided, That if either party shall, after due notice, refuse or neglect to nominate as aforesaid, it shall be the duty of such justice to appoint one other person in his stead.

c. 30, Act of June 13, 1836, P. L. 551.

See note to section 92 supra.

5. In all cases where public roads, or parts thereof, in townships of this Commonwealth, connecting a city with a city, a city with a borough, or a borough with a borough, or connecting one part of a city with another part of the same city, shall have become inconvenient and burdensome, and shall require altering and widening, either altering or widening, to meet the requirements of public travel thereon, it shall be lawful for the court of quarter sessions, by the same process now provided for opening and laying out public roads, to alter and widen, or either alter or widen, such roads, varying such part or parts of the said old roads as are rendered useless by such alteration: Provided, That upon a petition, the width of the road so widened shall be fixed by the court, on recommendation of the viewers, and damages, taking into account benefits conferred, shall be awarded and paid according to the provisions of the act of June thirteenth, one thousand eight hundred and thirty-six, (P. L. 551), and its supplements: Provided further, That, in addition to the powers conferred upon the viewers by this act, they are hereby authorized and shall assess the cost of such widening and altering, either widening or altering, of such road to the respective cities or boroughs, or city and borough and townships, or township, as the case may be, in such proportion as to them may seem equitable and just, taking into consideration benefits derived by such widening or altering, or either widening or altering, to the cities or boroughs, or city and borough and townships, or township, connected with and through which said such road may pass; and in case such widening or altering, or either, is made necessary in part by the use of such road by a corporation, or corporations, then the viewers shall have further power to assess such corporation, or corporations,



of the cost of widening and altering, or either, as the  
y agree is just and reasonable.

e 1, 1907, P. L. 372.

ct amends section 1, Act of April 3, 1903, P. L. 137.

ct does not repeal local or special laws. "*Loyalsock Twp. Road*"  
*rior Court*, 219. This case also contains dictum as to the un-  
tionality of this act.

act while imposing duties largely upon the court of quarter ses-  
also provides that the cost of the improvement may be assessed  
township. For this reason it has been included in the compila-

all cases of assessment of damages for the opening or  
f any street or highway in any (borough, city or other)  
ty, in this Commonwealth, the award of damages, if any,  
de all damages due to the grade at which said street or  
to be opened or widened, and the plan attached to the  
the viewers awarding the damages shall have therein a  
1 showing the existing grade, as well as the grade to which  
is to be opened and widened.

of June 15, 1915, P. L. 985.

act does not name townships specifically, but in view of the na-  
the subject dealt with and in view of the ruling in *Dare v. County*  
*ssioners*, 23 Pa., C. C., 646 and *Dreese v. Freed*, 42 Pa., C. C.,  
the effect that the word "Municipality" comprehends townships, it  
ought advisable to include this act.

en any local or special law in any of the townships of  
onwealth which provided for the laying out, opening and  
repair the several roads in the same (or which provided  
vy, assessment and collection of road taxes,) has been or  
after be repealed, then and in every such case the general  
shall apply to, govern and control the said township, the  
hough they had never been acting under or affected by any  
l or special law.

et of June 10, 1881, P. L. 105.

enever the center line of any highway constitutes the di-  
e between any city or borough and a township located in  
county, it shall be lawful for the commissioners of the  
nd for the commissioners or road supervisors of such town-  
the case may be, to enter into a contract with the city or  
providing for the grading, curbing, and macadamizing, or  
of the roadway of said highways; the cost thereof to be

borne one-half by the city or borough and one-half by the county and township in equal portions.

Sec. 1, Act of May 20, 1913, P. L. 267.

This section was repealed so far as it confers any powers or imposes any duties on boroughs by the Act of May 14, 1915, P. L. 312.

Supervisors of second class townships are now known as township supervisors, and are invested with all the powers and are subject to all the duties of road supervisors. See *infra* sections 120 and 601.

99. The said alteration or improvement shall be constructed, and subsequent repairs shall be made, under the supervision of the proper authorities of the said city or borough, in compliance with existing laws governing the construction of such alterations or improvements in said city or borough, and in further compliance with plans and specifications to be agreed upon, in writing, between said city or borough and the commissioners of the county and commissioners or road supervisors of the said township. The cost of repairs shall be borne one-half by the city or borough and one-half by the township, or by the county and township, in equal portions, or such other proportion as may be agreed upon by the county and township.

Sec. 2, Act of May 20, 1913, P. L. 267.

This section was repealed so far as it confers any powers or imposes any duties on boroughs, by the Act of May 14, 1915, P. L. 312.

See note on section 98 *supra*.

100. Whenever any street, alley, or highway, entirely within the limits of any city, borough, or township, shall divide the said city, borough, or township from any other municipality or township located in the same county, the property on the side of said street, alley, or highway, opposite the present line of said first-named municipality, borough, or township, shall, for a depth of one hundred and fifty feet from said line, be assessed for any and all municipal improvements to or on the streets, alleys, or highways on which the said property shall abut, in the manner provided by the acts of Assembly for assessments of benefits and damages, as if the said property were entirely located within the limits of said first named municipality, borough, or township.

Sec. 1, Act of May 28, 1907, P. L. 287.

This act was repealed so far as it relates to boroughs by Act of May 14, 1915, P. L. 312.

101. From and after the passage of this act, where the bureau of health or health officers of any (city, county,) township, (borough, or district) in the State shall declare as a public nuisance and menace to health any alley, lane, or passageway located therein, used wholly or partly by the public, that thereupon any two or more owners of property adjacent, contiguous, or abutting upon the same,

may present their petition, duly verified by oath or affirmation, to the court of quarter sessions of the said (city or) county in which the said alley, lane or passageway is located, setting forth the facts regarding the said nuisance, and praying that the said alley, lane passageway or so much thereof as may be necessary, be vacated; which said petition shall be accompanied by a certificate of the bureau of health or health officers, setting forth that they have declared the said alley, lane, or passageway to be a public nuisance and menace to health. That thereupon the said court shall appoint a jury of view of three men, being duly qualified residents of the (city or) county where the proceedings are had. That the said jury, being duly sworn or affirmed to faithfully perform their duties, shall give notice to the abutting, contiguous, and adjacent property owners, or others that are likely to be affected by the proceedings, of the time and place of the first meeting, in such manner as the court may direct; and after the said first meeting the jury shall proceed to view the premises and inquire into and take testimony, in the manner usually pursued by juries of view in the opening of streets and the like; and then to present and file in the court of their appointment their report, in writing, of their findings and recommendations as to whether or not the said alley, lane, or passageway, or so much thereof as may be necessary, be vacated, and awarding the damages and assessing the benefits, if any, to the properties affected thereby: Provided, That after they shall have prepared their report, the jury shall give notice in writing to all the parties to be affected by the said report, at least ten days before the day therein named for its filing, that the same is open to inspection, at a place within the said (city or) county named therein; within which period any party or person aggrieved thereby shall have the right to file with the jury exceptions thereto; whereupon it shall be the duty of the said jury to proceed to reconsider their said report with the exceptions; and if the same or any part thereof are in their opinion, in part or in whole, well founded, then it shall become their duty to modify their said report as justice may require; and thereupon file the same in the court of their appointment. If, however, no exceptions be filed within the period of the notice, then it shall be the duty of the said jury, at the expiration of the said period, to forthwith file its said report in the court of their appointment: Provided further, That any party or person affected by the said report shall have, after the same is filed in the court aforesaid, the right to appeal to the court of common pleas of the (city or) county where the proceedings are had, within thirty days after the filing of the said report; whereupon the appeal shall, as to the parties thereto, proceed in the same manner as actions of trespass are now conducted. At the end of the period allowed for appeal, the said report shall be absolutely con-



d by the court aforesaid, as to such awards or assessments of  
its from which no appeals have been taken: Provided, That  
act shall not apply in any case where the vacation of such alley,  
or passageway shall wholly deprive any lot or lots of ground  
ing thereon of the sole means of ingress or egress to or from such  
r lots, otherwise than to or from the front line or main line  
of: And provided further, That the provisions of this act shall  
apply to any alley, lane, or passageway, created or existing by  
or contract, and not heretofore accepted by the public author-  
the (city, borough, or )township in which the same may be lo

1, Act of June 20, 1911, P. L. 1087.

This act amends section 1, Act of April 17, 1905, P. L. 193.

The act has been repealed so far as it relates to boroughs by the Act  
of May 14, 1915, P. L. 312.

The Act of June 19, 1911, P. L. 1036, amending section 1 of the Act  
of June 8, 1907, P. L. 503, has been omitted as its provisions read ver-  
batim with those of the Act of June 20, 1911, P. L. 1087, *supra*.

There seem to be no local health authorities in second class town-  
ships. The subject of public health in townships of the second class seems  
to be exclusively administered by the State authorities. See the Act of  
May 14, 1909, P. L. 837.

Whenever any public road—or turnpike, which, under exist-  
laws, becomes a public road—is between two or more townships  
any division line between the same, in any county of this Com-  
wealth, has become useless, inconvenient, or burdensome, the  
of quarter sessions of the county in which the said road is lo-  
shall have the authority, upon application to it by petition,  
by at least fifteen property owners of each of said townships,  
are qualified electors therein, setting forth the facts, to inquire  
to change or vacate the whole or any part of said road, when-  
the same shall have become useless, inconvenient, or burden-  
and the same court shall proceed therein, by views and viewers,  
the manner provided for the laying out of roads and highways  
existing laws.

1, Act of June 7, 1907, P. L. 444.

This act supplements the Act of June 13, 1836, P. L. 551.

This section while primarily not township law, has been incorporated  
because the expense of laying out a new road under the act is imposed  
in the township. See *infra* sections 104 and 105.

The said court shall also have authority not only on said  
on, to change or vacate the whole or any part of the said road  
has become useless, inconvenient, or burdensome, but shall have  
ity also, whenever requested in and by said petition, to lay a  
oad, in the manner provided under existing laws, located in  
or in part in any one or more of the townships mentioned in



action of this act; said new road to take the place of the which has become useless, inconvenient, or burdensome.

Act of June 7, 1907, P. L. 444.

Whenever a new road is laid out, under the provisions of the costs and expenses of laying out, opening, and fitting the travel, as well as the damages sustained by the owner or land taken for the same, or through whose land the same shall be borne or paid by the several townships mentioned in section of this act, in such just and equitable proportions as the court of quarter sessions, upon report of three disinterested persons appointed by the said court to view and assess the same, shall determine.

Act of June 7, 1907, P. L. 444.

The costs of all proceedings, under the provisions of this act, shall be paid by the township or townships mentioned in the first section of this act, as the court shall determine and direct.

Act of June 7, 1907, P. L. 444.

The board of viewers to be appointed under this act shall consist of three disinterested persons.

Act of June 7, 1907, P. L. 444.

Where any street, lane, or alley laid out by any person or persons in any village or town plot, or in any plans of lots on lands controlled by such person or persons, shall have been actually used, or in any manner become, a public highway, and the said street, lane, or alley, or any part thereof, has been or shall hereafter be lawfully vacated as a public highway, and shall have been closed upon the ground, any action at law or equity by any person to enforce any right in said street, lane, or alley, so vacated, shall be barred, except in the ground embraced within the boundaries of the lot or lots, by reason of ownership of or interest in any lot or lots in said street, lane, or alley, otherwise, shall be brought within five years after the vacation of said street, lane, or alley as a public highway and the closing of the same on the ground, and not thereafter: Provided, That any person who would be sooner barred by this act shall not be thereby barred for one year from the approval hereof.

Act of March 30, 1911, P. L. 30.

From and after the expiration of a period of five years after the vacation of a street, lane, or alley, as mentioned in the preceding section, without the bringing of any such action as in said section provided, the designation of said street, lane, or alley upon said plat shall have no force or effect, and all easements in the ground

covered by said street, of every nature and kind whatsoever, and either public or private, shall cease and determine.

Sec. 2, Act of March 30, 1911, P. L. 30.

109. The right to damages against (cities, counties, boroughs, or) townships, within this Commonwealth, is hereby given to all owners or tenants of lands, property, or material abutting on, or through which pass, roads, streets, lanes or alleys, injured by the laying out, opening, widening, vacating, extending or grading of said roads, streets, lanes or alleys, or the changing of grades or lines thereof, by said (cities, counties, boroughs or) townships; the construction and the vacating by said (cities, counties, boroughs or) townships of bridges, and the piers, abutments, approaches, embankments, slopes, or causeways therefor, or leading thereto; (and the construction of sewers by said cities, counties, boroughs, or townships in, over, upon, along, or through said lands, property, or material.)

Sec. 1, Act of May 28, 1913, P. L. 368.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

110. All juries of view appointed, or which shall hereafter be appointed, under existing laws, for assessing damages or benefits for taking, using, occupying or injuring lands, property, or material, are hereby directed, and it shall be their duty, to assess the damages provided for in section one of this act, if any, against said (cities, counties, boroughs, or) townships, (as the case may be) and the benefits, if any, in connection therewith, and make report thereof as under existing laws.

Sec. 2, Act of May 28, 1913, P. L. 368.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

"The act does not change existing law, as to who is liable for the damages for the opening and vacating of public roads. Damages for opening a road in a township of the second class are therefore properly assessed against the county."

*Road in Fulton Township, 23 D. R., 678.*

"It is not the intention of this act that the damages should be assessed against the municipality, as such a construction would also require the benefits to be assessed to the municipalities, and this would be an absurdity."

*Rockland Avenue, 62 P. L. J., 631.*

111. The right of appeal to the proper court of common pleas from said report, and the right of trial by jury in said court of common pleas, and the right to file exceptions to said report, are hereby given to any party or parties not satisfied with said report, in accordance with proceedings under existing laws.

Sec. 3, Act of May 28, 1913, P. L. 368.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

112. After disposal of exceptions, or verdict and final judgment, any interested party or parties may have an appeal to the Superior Court or Supreme Court, as in any other cases.

Sec. 4, Act of May 28, 1913, P. L. 368.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

113. The provisions of this act shall apply to all existing and future proceedings.

Sec. 5, Act of May 28, 1913, P. L. 368.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

114. If any person working upon any road or highway, or if any one in company with such person, shall ask money or reward, or by any means whatever, shall extort, or endeavor to extort, and money, drink, or other thing, of or from any person traveling upon, or near such road or highway, the person so offending shall, for every such offence, forfeit and pay a sum not exceeding five dollars.

Sec. 65, Act of June 13, 1836, P. L. 531.

This section seems to apply to townships of the first class. See *supra* section 47.

"Working on a road or highway has a definite meaning. It means that kind of work which is laid out in opening or repairing a road, and generally under such supervisor or officer as has charge of the work. This seems to be implied from the 66th section of the act where if a 'supervisor connives at any person so asking or demanding money, etc,' he is subject to a greater penalty." The section does not apply to a person who demands toll, on the highway, under claim of right.

*Com. ex. rel. v. La Seur, 6 Pa., C. C., 529.*

For procedure to recover this penalty see *infra* section 251.

115. If any supervisor shall connive at any person so asking, demanding or contriving to extort money, drink or any other thing, from any person traveling, as aforesaid, such supervisor shall, for every such offence, forfeit and pay a sum not exceeding ten dollars.

Sec. 66, Act of June 13, 1836, P. L. 551.

For procedure to recover this penalty see *infra* section 251.

See also note to section 114 *supra*.

Quære: Whether this section applies to commissioners of first class townships under section 47 *supra*?

116. From and after the passage of this act the road commissioners and other officers having in charge the opening, constructing and repairing of public roads, highways and bridges in any township, in this Commonwealth, are hereby authorized at their option, to purchase for the use of their respective districts plows, scrapers, road machines and such other implements and materials as may, from time to time,

be found necessary in the opening, constructing and repairing roads, highways and bridges.

Sec. 1, Act of May 24, 1887, P. L. 202.

This section, if it is not supplied, seems to comprehend to the first class; see supra section 47.

In *Baldensparger v. Aman*, 16 D. R. 299, it was held that this act not repealed by the Act of April 21, 1905, P. L. 142, which latter act has been largely supplied.

The reason for the decision was that the Act of 1887 authorized levy of a cash tax (see infra sections 360 and 387) to pay for machinery, while the tax authorized by the said Act of 1905 was cash, but a work tax.

Quaere: Since the work tax has been abolished (infra section 387) this act supplied, as to townships of the first class by section 1 and as to townships of the second class, except possibly those under special acts, by section 182 infra?

A contract for the purchase of road machines under this section to be by a deliberate act had at a meeting of the township officers duly convened, of which all the officers had notice. Lack of meeting at such meeting is not fatal to the validity of a contract authorized

*Climax Road Machine Co., v. Allegheny Twp.* 10 Super. Ct.

*Austin Mfg. Co. v. Ayr Township*, 17 Super. Ct. 419.

*Climax Road Machine Co. v. Corydon Twp.* 5 D. R. 436.

*Wysox Township Road* 42 Super. Ct. 258.

For the power to levy a tax for the purposes expressed in this section see infra sections 360 and 387.

117. In all cases where any of the public highways of the Commonwealth are so located as to render them liable, or exposed to high wind during the winter season, to be so filled with snow as to cause them to be impassible, and where, in the judgment of the supervisors of roads of the several townships in which such highways are situated, such drifts of snow can be avoided by the use of any board, rail or fence that may be erected along either side of such public highways and replacing the same by a fence of posts, wire and boards, or rail combined, it may be lawful for the supervisors to agree with the owners of such fences upon the erection of a fence constructed of posts, wire and boards, or combined. And it may be lawful for supervisors to pay for the construction of such fences a sum not to exceed the first cost of the same. Provided, That the wire fence construction of such fences shall be without barbs: Provided, That this act shall not apply to any stone wall, hedge or ornament that is now or may be hereafter constructed.

Sec. 1, Act of May 26, 1897, P. L. 98.

This section seems to apply to first class townships. See supra section 47.



118. It shall not be lawful for any superintendent of highway township supervisor, superintendent or roadmaster, to be interested either directly or indirectly, in any purchase made or contract relating to roads and bridges, except as provided for in this act, nor furnish any materials therefor. Any person knowingly violating the provisions of this section shall be deemed guilty of a misdemeanor and on conviction thereof shall be sentenced to pay a fine not exceeding five hundred dollars (\$500), or to be imprisoned for a term not exceeding six months, both or either, at the discretion of the court and shall forfeit his office.

Sec. 18, Act of July 22, 1913, P. L. 915.

The superintendent of highways is the officer provided for in section 1 of the Act of May 28, 1915, P. L. 583, amending section 2 of the Act of May 31, 1911, P. L. 468.

119. If any superintendent, township supervisor, township superintendent, roadmaster, or contractor, employed to work on the roads, bridges and highways of the Commonwealth, shall violate any of the provisions of this act, other than those otherwise provided for, he shall be guilty of a misdemeanor, and, upon conviction, sentenced to pay a fine of not more than fifty dollars (\$50), to be collected from the name of the township, as other debts of like amount, and to be paid to township treasurer, for the use of the road fund of said township.

Sec. 19, Act of July 22, 1913, P. L. 915.

See note to section 118 supra.

120. The township supervisors or superintendents of the several townships of this Commonwealth, elected or appointed in pursuance of this act, shall have all the powers and shall perform all the duties imposed by the existing laws on supervisors of roads and bridges and highways, and shall be subject to the same responsibilities and penalties as road supervisors are now subject to, except in so far as changed or supplied by the terms of this act.

Sec. 20, Act of July 22, 1913, P. L. 915.

See note to section 118 supra.

121. The supervisors aforesaid, shall cause posts to be erected at the intersection of all public roads within their respective townships (where trees are not convenient) with boards firmly fixed thereto and index hands pointing to the direction of such roads, on which boards shall be inscribed in large and legible characters, the name of the town, village, or place to which such roads may lead, and the distance thereto computed in miles.

Sec. 61, Act of June 13, 1836, P. L. 551.

This section seems to apply to townships of the first class. See supra section 47.

122. If any supervisor shall, after ten days' personal notice, neglect or refuse to put up, or keep in complete repair, index boards, as aforesaid, such supervisor shall, for every such offence forfeit and pay a sum not exceeding ten dollars.

Sec. 62, Act of June 13, 1836, P. L. 551.

This section seems to apply to townships of the first class. See *supra* section 47.

See *infra* section 251 for procedure for recovering the penalty imposed by this section.

123. If any person shall wilfully destroy, deface or injure any guide post or index board erected at or near any public road, or any notice put up at any public bridges as aforesaid, such person shall, for every such offence, forfeit and pay a sum not less than five dollars, nor more than fifteen dollars.

Sec. 69, Act of June 13, 1836, P. L. 551.

This section seems to apply to townships of the first class. See *supra* section 47.

See *infra* section 251 for procedure for recovering the penalty imposed by this section.

This section seems to be supplied by the Act of April 23, 1909, P. L. 171 *infra* sections 124 and 125.

124. On and after the passage of this act, it shall be unlawful for any person to wilfully destroy, remove, injure, or deface any sign or index board, erected upon or near any public street, road, or bridge in this Commonwealth, by the authorities of any such (borough,) township, (or county) therein; or erected with the consent of the authorities having jurisdiction over such street, road, or bridge, by any club, association, or other organized body; for the direction, guidance, or safety of travellers; and any person violating this act shall be deemed guilty of a misdemeanor, and shall forfeit and pay a fine of not less than ten dollars, nor more than twenty-five dollars, with all costs of prosecution, together with the value of such sign so destroyed, removed, or defaced, and, in default of payment of said fine, costs, and expenses, shall undergo an imprisonment, in the jail of the proper county, for a period of not less than five, nor more than sixty days, at the discretion of the court.

Sec. 1, Act of April 23, 1909, P. L. 171.

See section 123 on the same subject.

125. Any and all such signs, of wood, metal, or other substance, affixed to trees or posts in or upon any highways, properly erected in such manner that they do not interfere with travel; or upon fences, telegraph, telephone, trolley or other poles, with the permission of the owners thereof; or upon private grounds where consent has been

obtained from the owners and tenants thereof, and nearby public roads, shall be deemed to be within the provisions of this act.

Sec. 2, Act of April 23, 1909, P. L. 171.

126. If any person shall stop, fill up or injure any drain or ditch, made by any supervisor, for the purpose of draining the water from any public road or highway, or shall divert or change the course thereof, without the authority of the supervisors for the time being, such person shall, for every such offence forfeit and pay a sum not less than four dollars, nor more than twenty dollars.

Sec. 67, Act of June 13, 1836, P. L. 551.

This section seems to apply to townships of the first class. See supra section 47.

A drain crossing a road is within the language of this section. *Com. v. Betts*, 76 Pa. 465.

Where supervisors open a drain along the side of a public road, and waters which naturally flowed from the road on to the lands of an adjoining owner, are carried off by the drain, and this condition of things exists for many years, a subsequent board of supervisors is not precluded thereby from closing up the drain and again diverting the water on to the neighboring land, if they do so in the exercise of a proper discretion.

*Lorah v. Amity Township*, 35 Super. Ct. 529.

This section has no application to a ditch within the limits of a borough, which borough had been created out of territory which was formerly part of a township.

*Com. v. Butler*, 39 Super. Ct., 125.

127. If any person shall stop or obstruct any public road or highway, or shall commit any nuisance thereon, by felling trees, making fences, turning the road, or in any other way, and do not on notice given by the supervisor of the respective township, forthwith remove the nuisance, and repair the damages done to such road, such person shall, for every such offence, forfeit and pay a sum not less than ten dollars, nor more than forty dollars: Provided, That nothing in this section shall be deemed to debar an indictment for any such nuisance, as in case of misdemeanor at common law.

Sec. 68, Act of June 13, 1836, P. L. 551.

This section seems to apply to townships of the first class. See supra section 47.

An owner of land through which a public road passes, may cut a passage across the road for the purpose of draining his land or leading water to his mill, because the land is his own. In doing so however, he has no right to injure the public easement, and to preserve that right he is bound not only to construct bridges over the ditches where they cross the highways, but also to keep them in repair.

*Woodring v. Forks Township* 28 Pa., 355.

The penalty imposed by this section is only incurred by the obstruction of a road surveyed, laid out, opened and used, under authority of law. A supervisor or path-master has no authority to change the route

a road after it is laid out and opened, even if it be wrong; and one constructing such altered road is not liable for the penalty provided by this section.

*Clark v. The Commonwealth* 33 Pa., 112.

It shall be unlawful for any person to throw, or cause to be thrown, any glass or metal or refuse, dangerous or detrimental to the safety of the public, upon any highway of any township (or borough.)

Act of May 1, 1913, P. L. 153.

Any person who shall violate the provisions of this act shall, upon conviction thereof before any justice of the peace of the proper township (or borough,) be sentenced to pay a fine of not less than ten dollars (\$10.00), nor more than one hundred dollars (\$100.00).

Act of May 1, 1913, P. L. 153.

Where any public highway in this Commonwealth passes through or along forested lands, wild lands, or uncultivated lands, and trees growing within the limits of the said highway, at a distance of less than fifteen feet on either side of the centreline of said highway, and of less than four inches in diameter at a point two feet from the surface of the ground, shall be cut down or destroyed by the commissioners, supervisors, or road-masters employed by them, or by any other person, without first obtaining the consent of the abutting property owners. If any board of commissioners or supervisors deem the removal of any such trees, beyond said limit of fifteen feet on each side of the centre-line of said highway, necessary for the improvement of the road, and the consent of the abutting property owners cannot be obtained, the board of commissioners or supervisors may appeal from their decision to the judge of the court of the proper district; who is hereby directed to examine and inquire into all such subjects of dispute, and to report thereon to the court, and, having due regard for the desirability of road improvement as well as for the preservation of the forest, shall, after hearing all parties in interest, make such order in relation thereto as to him shall appear reasonable, equitable, and just; from whose decision there shall be no appeal: Provided, That the commissioners or supervisors shall at all times have the right to remove brush and other refuse from along the sides of the road, to the full legal width thereof: And provided further, That all such clearing and removal of brush and refuse shall be confined to growth that is within the limit hereinabove described, and to the removal of trees that in any way may interfere with public travel; and that no injury, by fire, cutting, abrasion, or otherwise, shall be done to any standing timber.

Act of April 1, 1909, P. L. 97.



enever any public highway running through improved or  
lands, in this Commonwealth, has been opened, and there  
owing along the roadsides, and within the road limits,  
rees not interfering with public travel, no board of super-  
ad-masters, or other persons in their employ, shall remove,  
or destroy or in any other manner interfere with, such  
rees, unless said removal or cutting shall be absolutely  
or the purpose of maintaining the highway at its best and  
iciency; and, then, not until the abutting property owners  
received notice thereof, and an agreement shall have been  
between the local highway authorities and the abutting  
wners relating to the removal, cutting or interference with

If the said parties shall be unable to arrive at an agree-  
ment thereto, the same shall be referred to a judge of the  
t, as aforesaid. Said judge shall examine and inquire into  
of controversy, and, in like manner, render his decision,  
l for in section one of this act; and from which decision  
be no appeal.

of April 1, 1909, P. L. 97.

logs, cordwood, branch wood, or other forms of wood,  
l be derived from the destruction or removal of any trees  
ong the public highways of this Commonwealth, as afore-  
be surrendered to, and remain the property of, the respec-  
ing owners.

t of April 1, 1909, P. L. 97.

thing in this act shall be so construed as to prevent the  
way authorities; anywhere in this Commonwealth, from  
uch roadside trees which may be thrown down by the wind,  
n such position as to be a menace to public travel, or which  
of any other cause, become a source of danger to the public  
to be removed; but every such act of removal on the part  
way authorities shall always be made with due regard to  
stances in such case, so as to preserve the true intent and  
this act.

t of April 1, 1909, P. L. 97.

e term "highway authorities" in this act shall be construed  
ny person who, by law, shall be vested with the power to  
7 manner with the public highways of this Commonwealth,  
include (the officials of the State Highway Department,) s,  
road-masters, and all persons employed by them in any  
r who exercise any authority over said roads or highways.

t of April 1, 1909, P. L. 97.

135. If any commissioner, supervisor, road-master, or person in their employ, or any other person, shall cut down, kill, or injure any living tree, growing as aforesaid, and of a size four inches in diameter, or greater, at a point two feet from the surface of the ground, or shall violate any other provision of this act, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a penalty of not more than five dollars for every tree so cut, injured, or destroyed, with costs of suit; to be recovered in an appropriate action to be brought before any magistrate, aldermen, or justice of the peace of the county wherein the said offence was committed, who, upon affidavit of any person, duly presented, is hereby authorized and directed to issue his warrant to any person empowered to make arrests, directing him to arrest the person so charged. The said magistrate, alderman, or justice of the peace shall, thereupon, proceed to hear both the complainant and the defendant and their witnesses, and shall forthwith decide as to him shall appear to be just and right. If any defendant upon conviction for any offence shall fail or refuse to pay the fine and costs which may be imposed upon him, or shall not give bond with approved surety to pay the same within ten days, he shall be committed to the jail of the county wherein the offense was committed, there to remain for a period not to exceed thirty days, or until he shall, in the meantime, have paid the said fine and costs in full.

Sec. 6, Act of April 1, 1909, P. L. 97.

136. Under the sanction and supervision of the supervisors of roads, or road commissioners of the respective townships, (or council, or persons having charge of the streets, in the respective boroughs of this Commonwealth,) any person, or persons, or chartered societies not for profit, the object of which shall be to erect and maintain watering troughs along the public roads, who may erect and maintain in good repair, a public watering trough of not less than six feet in length, twelve inches in width and ten inches in depth, in the clear, of either wood, or iron, or of stone, except that the stone troughs shall be not less than two feet in length, and have pure clear water continually running into the same, except in hard freezing weather, by a pipe, pipes or otherwise, upon the side of the public highway, erected of sufficient height and of easy access, suitable for watering horses and cattle, and approved by the supervisors or road commissioners of such township, (or person having charge of the streets of the boroughs,) shall be entitled to receive from the road fund thereof a sum of money not exceeding five dollars annually, as shall be agreed upon at the time of the erection of such trough: (Provided, That the town council, or person having charge of the streets, in the several boroughs, may erect proper and suitable watering troughs at an ex-

pense not exceeding twenty dollars:) Provided further, That after the first payment and before receiving any subsequent annual payment, such chartered society shall publish a statement, attested by the president and secretary, certifying that all the moneys received from the road fund, as provided by said act, has been expended in the erection of troughs and supplying the same with water, or in keeping those already erected in proper repair: Provided, That, if more than one watering trough is erected and maintained within five miles on the same road, but one such trough shall be entitled to the benefit of this act, and the oldest and first trough shall have the preference.

Sec. 1, Act of June 25, 1885, P. L. 168.

This act amends section 1, Act of April 28, 1876, P. L. 51.

This act was repealed so far as it confers any powers or imposes any duties on boroughs by the Act of May 14, 1915, P. L. 312.

This section seems to apply to townships of the first class. See *supra* section 47.

This amendment was crudely drafted. It is entitled a supplement, whereas it is in fact a direct amendment. According to the language of the enacting portion of section one, it purports to amend a supplement to the Act of 1876, whereas it directly amends the aforesaid Act of 1876 as it was originally enacted.

137. On any public road where running water cannot be supplied for such trough, any person or persons, who may provide water for the purpose aforesaid by a pump, and keep the same in proper repair to be worked by the person desiring water for their horses or cattle, may erect such pump and trough and to be approved of by the supervisor or road commissioner of such (borough or) township, shall be entitled to the same annual pay from the road fund thereof as provided for in the first section of this act.

Sec. 2, Act of April 28, 1876, P. L. 51.

This act was repealed so far as it confers any powers or imposes any duties on boroughs by the Act of May 14, 1915, P. L. 312.

This section seems to apply to townships of the first class. See *supra* section 47.

138. Whenever any person or persons who are in possession of running water, or where water might be supplied easily by a pump, that might be made available for the purposes of the provisions of this act, who neglect to accept the same, the supervisors or commissioners of roads or streets may, with the consent of the owners or occupants thereof, erect such troughs and keep the same in proper repair at an annual expense not to exceed that as provided for by the first section of this act.

Sec. 3, Act of April 28, 1876, P. L. 51.

This act was repealed so far as it confers any powers or imposes any duties on boroughs by the Act of May 14, 1915, P. L. 312.

This section seems to apply to townships of the first class. See *supra* section 47.

139. Whenever any watering trough is erected for aforesaid, the same shall be public property; and any persons wantonly destroying or injuring the same, or causing nuisance upon or near the same, shall be liable to a process of any justice of the peace of the proper county, and if due to the satisfaction of the said justice, shall be punishable by a fine not exceeding twenty dollars, and upon refusing to pay together with the costs thereof, may be by the said justice committed to the prison of the county for a period not exceeding ten days.

Sec. 4, Act of April 28, 1876, P. L. 51.

This act was repealed so far as it confers any powers or imposes duties on boroughs by the Act of May 14, 1915, P. L. 312.

This section seems to apply to townships of the first class. section 47.

140. Whenever watering troughs have already been erected on public highways, the supervisors and road commissioners shall give the owners the preference as to the benefits of this act. They accept the provisions of the same.

Sec. 5, Act of April 28, 1876, P. L. 51.

This section was repealed so far as it confers any powers or imposes duties on boroughs by the Act of May 14, 1915, P. L. 312.

This section seems to apply to townships of the first class. section 47.

## (2) Provisions Relating Exclusively to First Class

141. It shall be the duty of the board of township commissioners to cause all public highways within the township, now laid out by lawful authority, to be effectually opened and kept in repair at all seasons, and clear of all impediments to and convenient passing and traveling.

Sec. 9, Act of April 28, 1899, P. L. 104.

This act is constitutional. *Com. ex. rel. Jones v. Blackledge*, 100 N. C. 372.

142. The board shall have power to appoint one or more supervisors or engineers of highways, and by ordinance to fix their duties and to fix their salaries. All such officers shall be appointed at the pleasure of the board. The board shall cause to be employed a sufficient number of workmen, mechanics and laborers for the care of the public roads, and shall have power to purchase necessary tools, implements, machinery and materials of all



in their judgment, shall be necessary for the making, paving and pairing of the public highways.

Sec. 10, Act of April 28, 1899, P. L. 104.

See section 116 supra as to the purchase of road machinery, implements and materials.

The supervisor here referred to is not a township supervisor or road supervisor. This office was abolished by section 4, of the Act of April 28, 1899, P. L. 104.

143. The board of commissioners shall have power, by their officers and servants, to enter upon any lands or enclosures, to cut, maintain and repair all such ditches and drains through the same as they shall judge necessary, to carry the water from the said lands

Sec. 11, Act of April 28, 1899, P. L. 104.

144. The board of township commissioners, in townships of the first class, shall have power to enact, ordain, survey, lay out, vacate, straighten, vacate, and relay all roads, streets, lanes and alleys within the township upon the petition of any owner or owners of property through whose lands any such road, street, lane, or alley shall pass or upon whose land the same shall abut, if in the judgment of the board of commissioners the same shall be deemed proper and necessary for the public convenience or benefit; and thereupon the board shall give ten days' notice to the property owners affected thereby, of the time and place, when and where, all parties interested may meet and be heard; and witnesses may be summoned, and examined by said board and said parties interested, at said meeting or adjournment thereof; and after such hearing and a consideration of the matter, should the said board or a majority thereof decide in favor of granting the prayer of said petition, they shall make a report, together with a draft or survey of said road, street, lane or alley, fixing the width thereof, and noting the improvements along the line thereof, together with the names of the owners of property through which the same shall pass or whereon it shall abut, and the report and draft shall be filed in the office of the clerk of the county at the next quarter sessions of the county wherein said township is situated. Provided, however, That any citizen or freeholder of said township may, within thirty days after the filing of said report, upon entering in said court sufficient surety to indemnify the said board for all damages incurred in the proceedings, file in said court exceptions to the report, together with a petition for review, in conformity with the now existing road laws of this Commonwealth.

Sec. 1, Act of June 7, 1901, P. L. 510.

The jurisdiction of the court of quarter sessions under the Act of June 13, 1836, P. L. 551, of proceedings to lay out a public road between two townships of the first class, has not been taken away by this act.

*"In Re Road in Scott and Union Twp. and Greene Tree Boro."* 10 D. R. 791.

This act does not apply to a road which was laid out before its enactment.

*Road in Plymouth Township, 15 D. R. 558.*

The authority of township commissioners to vacate highways, conferred by this act applies only to a highway entirely within the township.

*Com. v. Sager, 12 Del. Co., 368.*

*St. Davids Church v. Sayen, 244 Pa., 300.*

145. Upon the favorable action in such petition by said board, and after the expiration of the term allowed for filing exceptions, or upon the order of said court, in case the compensation for the damages or benefits accruing therefrom have not been agreed upon, the said court of quarter sessions of the proper county, or any law judge thereof in vacation, on application thereto by petition by said board of commissioners or any person interested, shall appoint three discreet and disinterested freeholders of said township as viewers; and appoint a time, not less than twenty nor more than thirty days thereafter, when said viewers shall meet upon the line of the improvement and view the same and the premises affected thereby. The said viewers shall give at least ten days' notice of the time of their first meeting, by publication in one or more newspapers of said township, in which it is situate, and by handbills posted upon the premises, or otherwise as the said court shall direct, having regard to the circumstances of the case.

Sec. 2, Act of June 7, 1901, P. L. 510.

See notes to section 144 supra.

146. The said viewers, having been duly sworn or affirmed, faithfully, justly and impartially to decide and true report to make concerning all matters and things to be submitted to them, and in relation to which they are authorized to inquire in pursuance of the provisions of this act, and having viewed the premises and examined the property, shall hear all parties interested and their witnesses, and shall estimate and determine the damages for property taken or injured, to whom the same is payable; and, having so estimated and determined the damages, together with the benefits as hereinafter mentioned, they shall prepare a schedule thereof, and give notice to all parties to whom damages are allowed, or upon whom assessments for benefits are made, of a time, not less than ten days thereafter, and of a place where said viewers will meet and exhibit said schedule, and hear all exceptions thereto and evidence. Notice of the time and place of said meeting shall be given, by personal service, upon all parties allowed damages or assessed benefits, as shown upon said schedule, if resident in the township, and to all others by publication in newspapers, as provided in the second section of this act. After making whatever changes are deemed necessary, the said view-

ers shall make report to the courts, showing the damages and benefits allowed and assessed in each case; and file therewith a plan, showing the improvements, the properties taken or injured, and the properties benefited thereby. When said report is filed, notice thereof shall be given, by publication once in the newspaper or newspapers publishing the notice provided for in section second of this act. Said notice shall state the date of filing of the report, and shall contain a schedule of the damages and benefits as shown therein; and shall further state that, unless exceptions thereto be filed within thirty days from the date of filing of said report, it shall be confirmed absolutely.

Sec. 3, Act of June 7, 1901, P. L. 510.

See notes to Section 144, *supra*.

147. The payment of damages may be imposed, either in whole or in part, on the township, or, in whole or in part, by assessments upon the property benefited by such improvements, as said viewers may determine and the court approve; and in the latter case, the viewers appointed to assess damages, having first estimated and determined the same apart from benefits, shall also assess the said damages, or so much thereof as they may deem just and reasonable, upon the properties peculiarly benefited by the improvement, including in the said assessment all properties will be benefited thereby, and shall report the same to the said court. The total assessments for benefits shall not exceed the total damages awarded or agreed upon.

The compensation of said viewers shall be two dollars per day for each day employed in their duties.

Sec. 4, Act of June 7, 1901, P. L. 510.

See notes to section 144 *supra*.

148. Upon the report of said viewers, or any two of them, being filed in said court, any party may, within thirty days thereafter, file exceptions to the same; and the court shall have power to confirm said report, or to modify, change or otherwise correct the same, or change the assessments made therein, or refer the same back to the same or to new viewers, with like power as to their report; or, within thirty days from the filing of any report in court, any party whose property is taken or injured may appeal and demand a trial by jury, and any party interested in any assessment of damages or benefits may, within thirty days after a final decree, have an appeal to the Supreme Court. The said court of quarter sessions shall have power to order what notices shall be given in connection with any part of said proceedings, and may make all such orders as it may deem requisite.

Sec. 5, Act of June 7, 1901, P. L. 510.

See note to section 144 *supra*.



149. After the passage or approval of any ordinance by said board of commissioners, for the opening, widening, straightening, extending, or vacating, or improving any road, street, or alley, notice shall, within ten days thereafter, be given by hand bills, posted in conspicuous places along the line of the proposed improvement, which notice shall state the fact of the passage or approval of the ordinance and the date of the passage or approval.

Sec. 6, Act of June 7, 1901, P. L. 510.

See note to section 144 supra.

150. The municipalities of the Commonwealth shall have power and authority to vacate, in whole or in part, all streets, lanes and alleys within their corporate limits, laid out by this Commonwealth, whenever the same, or the portion to be vacated, shall have remained unopened for a continuous period of thirty years next preceding such vacation.

Sec. 1, Act of March 21, 1905, P. L. 46.

Roads in townships of the second class are laid out and vacated by the court of quarter sessions. In several instances the power of vacating roads has been conferred upon first class townships. In view of the decisions in *Dare v. Co. Com.* 23 Pa., C. C. 646, and *Dreese v. Freed*, 42 Pa., C. C. 242, in which it was held that the term municipality included a township, this act has been included.

151. In exercising the power aforesaid, all proceedings for the ascertaining of damages, and the assessment of benefits incident thereto, shall be as now provided for by law in reference to the payment of costs, damages and expenses of public improvements within municipal corporations.

Sec. 2, Act of March 21, 1905, P. L. 46.

152. In any township in this Commonwealth, which is adjacent to any city or borough, in which the authorities vested with the power to lay out and open public roads in said township determine to lay out and open a public road therein, which will be a continuation or extension of a street already opened and traveled by the public within the said city or borough, it shall be lawful for the authorities, so vested with the power to lay out and open roads in such township, to lay out and open said proposed road of the same width as the street of which it is a continuation or extension: Provided, That the opening of said proposed road shall be subject to all of the provisions now by law governing the laying out and opening of public roads in such township, excepting as to the width thereof.

Sec. 1, Act of March 18, 1901, P. L. 51.

The above act has, in this work, been restricted to first class townships. The laying out of roads and streets in second class townships, a power vested in the quarter sessions court, is a subject which has been



excluded from this work. See introduction. It is possible this act applies to some second class townships that, by special acts of assembly, have power to lay out roads without the intervention of the said court of quarter sessions.

153. All the corporate power, authority and franchise of the township shall be vested in and exercised by the Board of Township Commissioners, and the said Board shall have particularly the following powers:

First. To open, grade, construct and pave all public highways in the township which shall or may be at any time laid out by lawful authority, and to keep the same in good order and repair. To construct footways along said highways, and to establish lights thereon where it may be deemed expedient to do so. To accept the dedication of public highways and alleys: Provided, That when any one or more taxpayers of any township or road district of the first class shall apply to the court of quarter sessions of the county in which said township or road district is situate, for the right to furnish all the material and labor necessary for opening, making, amending and repairing the public highways and bridges of said township or road district,—under the provisions of an act, entitled “An act enabling the taxpayers of townships and road districts to contract for making, at their own expense, the roads, and paying salaries of townships or road district officers, and thereby preventing the levy and collection of road tax therein,” approved June twelfth, one thousand eight hundred and ninety-three, (P. L. 451, *Infra* sections 176 to 181,)—the township commissioners of such township be and are hereby authorized and required to enter into such contract, under the directions of the court of quarter sessions of the county in which said township is situate, under the provisions of said act, in the same manner as the supervisors have heretofore been authorized and directed to enter into such contracts.

Sec. 1. Act of May 24, 1901, P. L. 297.

This act amends clause 1 of section 7 of the Act of April 28, 1899, P. L. 104.

The first paragraph of section 7 of the said Act of 1899 has been inserted at the beginning of this section in order to make the clause intelligible.

This Act of May 24, 1901, P. L. 297, is constitutional. *McKeown's Petition* 237 Pa. 626.

The Act of June 12, 1893, P. L. 451 is constitutional. *Lehigh Valley Coal Co's. Appeal*, 164 Pa., 44.

The Act of June 12, 1893, P. L. 451, extended to townships of the first class by this section should be construed as directory, and the township commissioners are not relieved from their duty of supervision. *McKeown's Petition*, 22 D. R. 916.

This section is not repealed by the Act of May 22, 1913, P. L. 348, *infra* sections 161 to 167.

"The legislation from 1899 down to date provides four methods of paving streets in townships of the first class, each complete in itself:

First. Under the above section, where a township acts on its own initiative and provides for the cost at the public expense.

Second. Under the Act of 1909, (infra sections 154 to 158), where the township acts on a petition of two-thirds of the property owners, who pay two-thirds of the cost, the township paying the other one-third.

Third. Under the Act of 1911, (infra sections 159 and 160), without petition of the property owners, when the streets to be paved do not exceed one thousand feet in length and connect two streets already paved, the property owners paying two-thirds of the cost.

Fourth. Under the Act of 1913, (infra sections 161 to 167), on the petition of a majority of the property owners in interest, based upon the number of feet fronting and abutting on the line of the proposed improvement, the cost and expense to be paid by the properties benefited or by the township, as determined in the first instance by viewers appointed under the provisions of the act."

*Caragnaro et al v. Township of Newport, et al 17 Luz. Leg. Reg. Reports, 345.*

At No. 11, October term, 1912, in the Court of Common Pleas of Luzerne county in the case of Walker v. Gorman, it was held this section is not repealed by the Act of April 22, 1909, P. L. 117, infra sections 154 to 158. This case is not reported.

154. From and after the passage of this act, the commissioners of any first class township of this Commonwealth shall have the power to require, by ordinance, and cause to be paved, curbed, or macadamized with brick, stone, or other suitable materials, any public street or thoroughfare, or parts thereof, which is now or may hereafter by laid out and opened in any of said townships, and collect, in the manner hereinafter provided, two-thirds of the cost and expenses of the same from the owners of the real estate bounding or abutting thereon, by an equal assessment on the feet front bounding or abutting as aforesaid; said assessment to be estimated by the street commissioner, or person in charge of said work, or other competent authority designated by the commissioners of said township: Provided, That the commissioners of any such township shall not require or cause to be paved any street or thoroughfare, or any part thereof, except upon the petition of two-thirds of the owners of property representing not less than two-thirds in number of feet of the properties fronting or abutting on said street or thoroughfare, or the part thereof proposed to be paved.

Sec. 1, Act of April 22, 1909, P. L. 117.

See note to section 153 supra.

This act repeals all general, local and special legislation which may be inconsistent.

155. All municipal assessments for paving, curbing, or macadamizing as aforesaid, shall be filed with the clerk or secretary of the township, who shall thereupon cause thirty days' written or printed no-

tice to be given to each party assessed, either by service on the owner or agent, or left on the assessed premises, that the assessments are due and payable. If said assessments, or any of them, shall remain unpaid at the expiration of said notice, the same shall be placed in the hands of the township solicitor, for collection, whose duty it shall be to collect the same, together with five per centum additional as attorney's commission, and interest from the completion of the paving, curbing, or macadamizing, by a municipal claim filed against the delinquent owner, describing the premises, upon which writs of scire facias may issue. When an owner has two or more lots against which there is an assessment for the same improvement, all of said lots shall be embraced in one claim.

Sec. 2, Act of April 22, 1909, P. L. 117.

See note to section 153 *supra*.

156. No assessments for paving, curbing, or macadamizing, under the provisions of this act, shall be a lien on real estate for more than six months from the time of the completion of such work, unless a claim for the same shall be filed in the office of the prothonotary of the proper county within that time; nor shall the same continue a lien longer than five years from the time of filing the claim, unless revived by scire facias, in the manner provided by law in the case of mechanics' claims.

Sec. 3, Act of April 22, 1909, P. L. 117.

See notes to section 153 *supra*.

157. Every claim shall be a plain statement, in which the corporate name of the township shall be used as a plaintiff, and the owner or owners named as defendants, and shall contain a description of the property or properties against which it is filed, the nature and kind of work done, and the time when the same was completed; and every claim filed shall be *prima facie* evidence of all matters therein set forth.

Sec. 4, Act of April 22, 1909, P. L. 117.

See notes to section 153 *supra*.

158. The term "owner" shall be constructed to mean all individuals, corporations, public or private, and associations having any title or interest in the property assessed. If the owner, to whom notice is required to be given by this act, is a non-resident of the township, and his, her, or their place of residence is unknown to the clerk or secretary of the township, or if the ownership of the property cannot be ascertained, the notice shall be posted on the premises, and a copy left with the occupant, if there be one.

Sec. 5, Act of April 22, 1909, P. L. 117.

See notes to section 153 *supra*.

159. All first class townships in this Commonwealth shall have power, without petition of property owners, to grade, pave, curb, macadamize, and otherwise improve public streets and thoroughfares, or parts thereof, when said streets or thoroughfares do not exceed one thousand feet in length, and connect two streets or thoroughfares, or parts of a street or thoroughfare, theretofore paved and improved: Provided, The ordinance authorizing and directing such improvement shall be adopted and enacted by an affirmative vote of three-fourths of the members-elect comprising the board of commissioners of the said township. No such ordinance shall be finally adopted and enacted in less than thirty days from the date of its introduction; and, in the meantime, copies of said ordinance shall be published in a newspaper in said township, or circulating therein, once a week for two weeks, and by at least five handbills posted along the proposed improvement ten days before the final passage of such ordinance, and by mailing a notice to each owner of property abutting on said improvement, at his last known post office address, at least ten days before the final passage of such ordinance.

Sec. 1, Act of May 12, 1911, P. L. 307.

See notes to section 153 *supra*.

160. The board of commissioners shall have power to collect two-thirds of the cost and expense of said improvement from the owners of real estate bounding or abutting thereon, by an equal assessment on the foot front bounding or abutting as aforesaid. Said assessments shall be made and collected as now provided by law in reference to townships of the first class.

Sec. 2, Act of May 12, 1911, P. L. 307.

See notes to section 153 *supra*.

The reference in this section to the method of collecting the cost of the improvement is likely to the Act of April 22, 1909, P. L. 117, *supra* sections 154 to 158.

161. From and after the passage of this act, every township of the first class of this Commonwealth shall have power to lay out, establish, or re-establish grades of streets or alleys, or parts thereof, and to construct bridges, piers, and abutments therefor, (and sewers and drains), in any street or alley, or through or on or over private property. Every township of the first class shall also have power, upon the petition of a majority of property owners in interest, based upon the number of feet fronting and abutting on the line of the proposed improvement, to be verified by affidavit of one or more parties to said petition, to grade, pave, curb, macadamize, or otherwise improve, any public street or public alley, or part thereof, within its corporate limits, or which may be, in whole or in part, boundaries thereof. Such township of the first class is hereby an-



thorized to ascertain, levy, and collect the costs, damages, and expenses of the (sewer or) grading, paving, curbing, macadamizing, or other improvement, of each street or alley in the manner following:—

Said township of the first class, or any person or persons interested, may, at any time after such work or labor has been done or material furnished or damage done, present its, her, his or their petition in any court of common pleas of the proper county, or to any law judge thereof in vacation; and the court shall appoint three discreet and disinterested persons as viewers, and appoint a time, not less than twenty or more than thirty days thereafter, when said viewers shall meet upon the line of the improvement and view the same and the premises affected thereby. The said viewers shall give at least ten days' notice of the time of their first meeting, by publication in one or more newspapers, published in the township of the first class, or of general circulation, published in the county in which it is situated, and by handbills posted upon the premises or otherwise, as the said court shall direct, having regard to the circumstances of the case.

Sec. 1, Act of May 23, 1913, P. L. 348.

162. The said viewers, having been duly sworn or affirmed faithfully, justly and impartially to decide and a true report to make concerning all matters and things to be submitted to them, or in relation to which they are authorized to inquire in pursuance of the provisions of this act, and having viewed the premises and examined the property, shall hear all parties interested and their witnesses; and shall estimate and determine the value of property taken, injured or destroyed, to whom the same is payable; and shall assess the costs and expenses of the (sewer, or) grading, paving, curbing, macadamizing, or otherwise improving, said street, lane or alley, upon the property benefited, according to benefits; and having so estimated and determined the damages, together with the benefits as hereinbefore mentioned, they shall prepare a schedule thereof, and give notice to all parties to whom damages are allowed, or upon whom assessments for benefits are made, of a time, not less than ten days thereafter, and of a place, where said viewers shall meet and exhibit said schedule and hear all exceptions thereto and evidence thereon. Notice of the time and place of said meeting shall be in the manner provided by law for the service of a summons in personal action, upon all parties allowed damages or assessed benefits, as shown by said schedule, if the parties can be found in the municipality, or upon an adult person residing upon the property affected by the assignment, in case the owner or reputed owner cannot be found, and to all other persons by publication in the newspaper in which the

first notice of said view was published. When no service is made upon the owner, reputed owner, or upon an adult person residing upon the property affected, said notice, where publication thereof has also been made, shall be deemed to have been properly served if tacked or conspicuously posted upon the premises. After making whatever changes are deemed necessary, the said viewers shall make report to the court, showing damages and benefits allowed and assessed in each case; and file therewith a plan showing the improvement, the properties taken, injured, or destroyed thereby, and the properties thereby benefited. When said report is filed, notice shall be given by publication once in the newspaper or newspapers publishing the notice provided for in section one of this act. Said notice shall state the date of the filing of the report, and shall contain a schedule of the damages and benefits as shown therein; and shall further state that, unless exception thereto be filed within thirty days from the date of filing, the said report will be confirmed absolutely.

Sec. 2, Act of May 23, 1913, P. L. 348.

See notes to section 153 supra.

163. The payment of damages sustained, and costs and expenses incurred, by the making of the improvements aforesaid, may be made either in whole or in part by said township of the first class, or in whole or in part by assessments upon the property benefited by such improvement, as said viewers may determine and the court approve; and, in the latter case, the viewers appointed having first estimated and determined the damages apart from the benefits, shall also assess said damages, or so much thereof as they deem just and reasonable, upon the properties peculiarly benefited by the improvements, including in the said assessment all property for which damages have been allowed, if, in their judgment, such properties will be benefited thereby, and shall report the same to said court; the total assessment for benefits to pay damages, costs and expenses shall not exceed the total costs, damages and expenses awarded and agreed upon.

Sec. 3, Act of May 23, 1913, P. L. 348.

See notes to section 153 supra.

164. The viewers provided for in the foregoing sections may be appointed at any time before, or at any time after, the entry, taking, appropriation, or injury of any property or materials for constructing said improvements, or the commencement of the improvements above set forth. All court costs incurred in the proceedings shall be defrayed by said township of the first class.

Sec. 4, Act of May 23, 1913, P. L. 348.

See notes to section 153 supra.

165. Upon the report of said viewers, or any two of them, being filed in said court, any party interested may, within thirty days thereafter, file exceptions to the same; and the court shall have power to confirm said report, or to modify, change or otherwise correct the same, or change the said assessments made therein, or refer the same back to the same or new viewers, with like power as to their report. When said report is first filed in court the prothonotary thereof shall mark the same confirmed nisi, and, in case no exceptions are filed thereto within thirty days, he shall enter a decree( as of course) that the said report be confirmed absolutely. Within thirty days after the confirmation, modification, changing, or correction of any report, any interested party may appeal from the said decree to the Superior Court or to the Supreme Court, as the case may be. The said report, when as finally confirmed, shall be conclusive as to any assessments made therein to pay the costs, damages, and expenses of said improvement. Within thirty days after said report is filed in court, as aforesaid, any party whose property is taken, injured or destroyed, or who is assessed benefits to pay damages for property taken, injured or destroyed, may appeal to the court of common pleas, and demand a trial by jury according to the course of the common law. Upon the trial of any such appeal in court, the report of viewers, as finally approved, confirmed, modified or changed by the court, shall be prima facie evidence of the benefits as therein mentioned; and in case the party appellant does not obtain a verdict more favorable than was the report of the viewers, as finally confirmed, modified or changed, the said appellant shall not recover any costs on the appeal. No appeal under this act shall prevent the filing of liens by any township of the first class for any assessment made by said report; but upon the final determination of the issue, the court shall make such order as to lien or liens filed as shall appear right and proper.

Sec. 5, Act of May 23, 1913, P. L. 348.

See notes to section 153 supra.

166. The majority in interest required for petition to the township commissioners shall be fixed as of the date of the presentation of said petition. After the passage or approval of any ordinance for the grading, paving, macadamizing, or otherwise improving, any street, lane or alley, notice shall, within ten days thereafter, be given by hand-bills posted in conspicuous places along the line of the proposed improvement, which notice shall state the fact of the passage or approval of the ordinance, the date of the passage or approval, that the petition for the improvement was signed by a majority in interest and number of owners of property abutting on the line of the proposed improvement, and that any person interested



and denying the fact that said petition was so signed may appeal to any court of common pleas of the proper county, within sixty days from the passage or approval of said ordinance; and any person interested may, within sixty days from the passage or approval of said ordinance, present a petition to any court of common pleas of the proper county, setting forth the facts; whereupon the said court shall require and determine whether the said improvement was petitioned for by the requisite majority, and, if said court shall find that it was not so petitioned for, shall quash said ordinance; but if said court shall find that it was so petitioned for, it shall approve the ordinance. If no appeal shall be taken, as aforesaid, or if the court on appeal shall approve the ordinance, the township of the first class may proceed with the improvement; and thereafter all parties interested shall be estopped from denying the fact that said petition was signed by the requisite majority of property owners, as required by this act. All assessments for benefits to pay damages, costs and expenses shall bear interest, at the expiration of thirty days after they shall have been finally ascertained and fixed, and shall be payable to the treasurer or other proper officer of the township of the first class.

Sec. 6, Act of May 23, 1913, P. L. 348.

See notes to section 153 *supra*.

167. Every township of the first class shall have a general plan of its streets and alleys, including those which have been or may be laid out but not opened; which plan shall be filed in the office of the engineer, or other proper office, of the said township, and all subdivisions of property thereafter made shall conform thereto. No streets or alleys, or parts thereof, laid out and confirmed, shall afterwards be altered without the consent of the commissioners of the said township of the first class; and no map or plot of streets or alleys, shall be entered or recorded, in any public office of the county in which said township of the first class is situated, until approved by the board of commissioners of said township. No person shall hereafter be entitled to recover any damages for any buildings or improvements of any kind, which shall or may be placed or constructed upon, or within the lines of, any located street or alley, after the same shall have been located or ordained, or plan thereof approved by the board of commissioners of said township.

Sec. 7, Act of May 23, 1913, P. L. 348.

See notes to section 153 *supra*.

168. Adjoining boroughs and first class townships of this Commonwealth shall have power to grade, pave and curb or macadamize, and to enter into agreements with each other for the grading, paving and curbing or macadamizing of, by joint contract, streets and alleys



which may be in whole or in part of the boundaries between such municipalities; and to provide in such contract that the damages, costs and expenses of said improvements shall be divided between such municipalities in the proportion and manner agreed upon.

Sec. 1, Act of July 10, 1901, P. L. 637.

This section is repealed so far as it confers any powers or imposes any duties on boroughs by the Act of May 14, 1915, P. L. 312.

This act does not provide an exclusive method for improving a road lying partly in a township and partly in a borough.

*"In re improvement of Brownsrille Avenue," 57 P. L. J. 291.*

169. In grading, paving and curbing or macadamizing any street or alley, under the provisions of this act, which may be in whole or in part in the boundaries as aforesaid, boroughs shall exercise the power herein conferred upon petition of the councils by a majority of the property owners in interest and number, abutting the portion of the line of the proposed improvement within the borough limits, to be verified by the affidavit of one or more of the parties to said petition (a majority in interest of owners, or (of) undivided interests in any piece of property, to be deemed and treated as one person for the purposes of petition) asking that such improvement be made; and the portion of the damages, costs and expenses agreed to be paid by any borough shall be ascertained, and the benefits incident thereto shall be assessed and collected, in manner now provided by law for the payment of costs, damages and expenses of public improvements within municipal corporations in this Commonwealth: Provided, That boroughs may agree to pay any part of the costs, damages and expenses of such improvements out of the general funds.

Sec. 2, Act of July 10, 1901, P. L. 637.

This section is repealed so far as it confers any powers or imposes any duties on boroughs by the Act of May 14, 1915, P. L. 312.

See note to section 153 supra.

170. The portion of the damages, costs and expenses, when any street or alley which may be in whole or part the boundary between a borough and first class township is improved by contract under the provisions of this act, agreed to be paid by any first class township, shall be ascertained in like manner and by the same viewers appointed to ascertain the borough's share, but shall be paid out of the general funds of such township.

Sec. 3, Act of July 10, 1901, P. L. 637.

This section is repealed so far as it confers any powers or imposes any duties on boroughs by the Act of May 14, 1915, P. L. 312.

See note to section 153 supra.

171. Whenever, hereafter, in any township of the first class in this Commonwealth, the board of county commissioners are about to improve any road or street in such townships, under the laws of this

Commonwealth authorizing them to make such improvement, and the part of such road or street so to be improved will be less than three-fifths (3-5) of the total width of said road or street as laid out or dedicated, it shall be lawful for the board of township commissioners of such township, and they are hereby authorized and empowered, to authorize by ordinance the proper officials of the said township to enter into an agreement with the county commissioners of such county, providing that the said county commissioners improve said road or street for a width of twenty-four feet, or a width equal to three-fifths (3-5) of the total width of said road or street to be agreed upon by the parties.

Such ordinance shall also stipulate that the township shall bear thirty-three and one-third (33 1-3) per centum of the total cost of such improvement, and the county shall bear the remaining cost thereof; and it shall further provide that the county commissioners shall have the right to issue permits determining the manner in which public service or other corporations or individuals shall place under such road or street its pipes, conduits, telegraph lines, or other devices used in the furtherance of its business. It shall further provide that, after such road or street is improved, it shall be the duty of the county to keep and maintain such improved road or street in good repair. The right is reserved, however, to the township of policing such road or street.

Sec. 1, Act of June 19, 1913, P. L. 541.

172. The board of township commissioners are hereby authorized and empowered to assess the whole or any part of the one-third (1-3) of the total cost of said improvement, being the proportion to be paid by the township under the provisions of section one hereof, upon the real estate bounding or abutting upon the improved road or street; which cost and expense upon the abutting real estate shall be assessed according to the foot front rule, or according to benefits, as the board of township commissioners shall by ordinance determine. When the costs and expenses, or any part thereof, are to be paid for by the foot front rule, the township shall assess or cause to be assessed the said cost and expense upon the real estate abounding or abutting on the line of the improvement, by an equal assessment on said property in proportion to the number of feet the same fronts on the respective road or street or part thereof to be improved; and the commissioners may provide for an equitable reduction from the frontage of lots at all street and other intersections, and at other places where, from the peculiar or the pointed shape of the lots, an assessment for the full frontage would be inequitable and unequal. When the costs and expenses, or any part thereof, is to be paid for by the real estate abutting, as aforesaid, according to benefits, the

same shall be assessed by viewers appointed by the court of common pleas, as is now or shall hereafter be provided by act of Assembly: Provided, however, That no ordinance shall be passed providing for the assessment of costs or expenses, as aforesaid, except upon the petition of a majority in number or of a majority in interest of the owners of property abutting on the line of the proposed improvement, requesting the township commissioners to join with the county commissioners in the improvement of the road or street, to be verified by the affidavit of one or more of the petitioners, one-half in interest of owners of undivided interests in any one piece of property to be deemed and treated as one person, and sufficient to bind said property for the purpose of said petition.

Sec. 2, Act of June 19, 1913, P. L. 541.

173. The board of commissioners, in every township of the first class in this Commonwealth may, whenever and wherever they may deem it expedient to do so, establish lights on and along State highways and turnpike roads running through such township: Provided, however, That no lights shall be established upon State highways and turnpike roads under the jurisdiction of the State Highway Department until a permit has first been obtained from the State Highway Commissioner.

Sec. 1, Act of July 7, 1913, P. L. 671.

### (3) Provisions Relating Exclusively to Second Class Townships.

174. Public roads or highways laid out, approved and entered on record as aforesaid, shall as soon as may be practicable, be effectually opened and constantly kept in repair, and all public roads or highways, made or to be made, shall at all seasons be kept clear of all impediments to easy and convenient passing and traveling, at the expense of the respective townships, as the law shall direct.

Sec. 6, Act of June 13, 1836, P. L. 551.

This Section is supplied as to first class townships by Section 9 of the Act of April 28, 1899, P. L. 104, *supra* Section 141.

The original construction of roads is to be governed by the topographical features, population and taxable ability of the township.

*Perry Township v. John*, 79 Pa. 412.

The personal liability of the supervisors for neglect of duty, does not lessen the liability of the township to those injured by the neglect.

*Rapho v. Moore*, 68 Pa. 404.

175. The supervisors aforesaid shall also have power and authority as aforesaid, to enter upon any such lands or enclosures and cut, open, maintain and repair all such drains or ditches through the

same, as they shall judge necessary to carry the water from the said roads.

Sec. 32, Act of June 13, 1836, P. L. 551.

This Section is supplied as to first class townships by Section 11 of the Act of April 28, 1899, P. L. 104, supra Section 143.

The constitutionality of this Section is recognized in *Hutchinson v. Clay Township*, 14 Super. Ct. 546.

176. From and after the passage of this act any one or more taxpayers of any township or road district may acquire the right to furnish all the materials and labor necessary for opening, making, amending and repairing the public highways and bridges of said township or road district in manner and under the conditions in the subsequent sections of this act set out.

Sec. 1, Act of June 12, 1893, P. L. 451.

The supreme court in "*Phila. & R. Coal & Iron Co's. Petition*," 200 Pa. 352, held this Act was repealed as to townships of the first class by the Act of April 28, 1899, P. L. 104. Pursuant to this decision the Act of May 24, 1901, P. L. 297, supra section 153, was passed making this Act of 1893 specifically apply to townships of the first class.

The Act is Constitutional: "*Lehigh Valley Coal Co's. Appeal*," 164 Pa. 44, and "*Philadelphia & Reading Coal and Iron Co's. Petitions*," 164 Pa. 248.

177. Any one or more taxpayers desirous of acquiring the said right shall, before the beginning of any township fiscal year, present to the Court of Quarter Sessions of the county in which the township or road district is situate as to which said right is desired, setting out that he, she or it or they are the owners of property assessed and taxed for road purposes in said township or road district, the approximate number of miles of public road in said township or road district, and the desire and ability of the petitioner or petitioners to lay out, open, make, amend and repair the public highways and bridges of said township or road district wholly at his, her, its or their own expense, for the ensuing township fiscal year, and to pay the other expenses of said township as in this act provided for, without any right against or claim upon said township or road district for or by reason of the materials, labor or money so furnished: Provided, That the supervisor or supervisors are hereby required to view and inspect the making and repairing of the public roads in said townships at least once during every month, and be fully satisfied that the petitioners have fully complied with their contract before final settlement and expiration of contract. And provided further, If at any time the supervisors shall see that any portion of said road needs repair, he shall notify said petitioners to repair the same, and in case said petitioners shall fail to repair said road within five days after notice as aforesaid, the supervisor is empowered to



purchase such materials and employ such men as may be necessary to repair said road and charge the same to said petitioners.

Sec. 2, Act of June 12, 1893, P. L. 451.

This Act does not in any way relieve the supervisors from their duty to see that the roads are kept in proper repair, nor does it relieve the township from liability for injuries sustained by reason of defects in such roads.

*Wagner v. Hazel Township*, 215 Pa. 219.

178. That with the said petition shall be presented a bond in the sum equal to five hundred dollars for each and every mile of public road in said township or road district, to be properly executed by said petitioners, with one or more sureties to be approved by said court, and payable to the said township or road district conditioned for the faithful performance of said petitioner or petitioners of his, her, its or their duty under the provisions of this act, and to save said township harmless from any loss or claim by reason of failure so to perform said duty.

Sec. 3, Act of June 12, 1893, P. L. 451.

179. Notice of the intention of presenting the petition and bond in the preceding section set out, and of the time when said petition and bond will be presented to the said court shall be given at least ten days before the same are so presented to the supervisor or supervisors and auditors of said township or to the road commissioners of said road district.

Sec. 4, Act of June 12, 1893, P. L. 451.

180. Upon said petition, bond and proof of the notice required in the preceding section hereof being presented to the said court, the same shall be ordered to be filed, and the court being satisfied of the good faith of the petitioners and the sufficiency of the petition, bond and notice shall order and direct the supervisor or supervisors of such township or road commissioners of such road district, on behalf of the township or road district they represent, to enter into a contract with the said petitioner or petitioners whereby the said petitioner or petitioners shall bind him, her or itself on themselves.

First. To open, make, amend and repair the public highways and bridges of said township or road district for the ensuing fiscal year thereof in a lawful and workmanlike manner, wholly at the expense of the said petitioner or petitioners, and without creating thereby any claim upon or right against said township for or by reason of the materials, labor or money for such person employed.

Second. To indemnify and save harmless the said township or road district from all claim, damage, cost or expense of whatever kind for or by reason of any act or omission of said petitioner or

petitioners, whereby any claim, suit or other demand may be set up or recovered against said township or road district.

Third. To pay, within sixty days from the beginning of said fiscal year, to the following officers of such township or road district the following sums to be received by said officers in full for all demands against such township or road district for their respective services as such officers to said township or road district for the fiscal years for which the said contract is made with such petitioner or petitioners, namely: To each township clerk, the sum of fifty dollars; to each of the auditors of such township, the sum of twenty-five dollars; and to an attorney to be elected by such supervisors or road commissioners as counsel for said township or road district, the sum of fifty dollars; to each supervisor or road commissioner, the sum of two hundred and fifty dollars.

Sec. 5, Act of June 12, 1893, P. L. 451.

181. In consideration of the obligations in the preceding section set out to be assumed and performed by the said petitioner or petitioners, the said supervisor or supervisors or road commissioners, on behalf of such township or road districts, shall stipulate the said township will not assess, levy or collect any tax for road purposes during the fiscal year for which such contract is made.

Sec. 6, Act of June 12, 1893, P. L. 451.

182. The board of supervisors is authorized to purchase such material, machinery, road drags, tools, and implements as shall, in its judgment, be necessary for making and repairing roads and bridges; the same to be the property of the township, and used for the benefit of the township, and to be properly housed and cared for by the board of supervisors.

All contracts for the purchase of power-rollers, traction-engines, stone-crushers, concrete-mixers, or road machines for grading or scraping, shall be made only after consultation with the superintendent in charge of such county or district, and no such contract shall be valid unless it shall be approved and signed by such superintendent.

Sec. 8, Act of July 22, 1913, P. L. 915.

183. Said township supervisors are hereby authorized to join with the township supervisors of one or more of the other townships, or the proper authorities of boroughs, in their respective counties, in the purchase of such road-making implements and machines as, in their judgment, may be too expensive to justify such purchase by said township alone; the same to belong to such township or boroughs in proportion to the amount paid therefor by each, and the right to use the same to be regulated by agreement to be made between said

road supervisors or borough authorities at the time of joining in said purchase: Provided, That said joint ownership shall only continue during such period as may be agreeable to all of said joint owners, and either board of township supervisors or borough authorities may, at any time, elect to sever said joint ownership as to any or all of said implements and machines. In case terms cannot be amicably agreed upon, either of said joint owning townships or boroughs may, by its board of supervisors or proper borough authorities, present its petition to the court of quarter sessions of the peace, setting forth the facts, verified by affidavit; which court, after notice and opportunity to be heard, shall then make such order for the sale or disposal of said joint property as will be right and proper in such case.

Part of Sec. 4, Act of June 14, 1911, P. L. 942.

The first sentence of this section is supplied by Sections 7 and 8 of the Act of July 22, 1913, P. L. 915, Sections 182 and 185.

It is doubtful whether this section is not entirely repealed by the Act of July 22, 1913, P. L. 915, as the latter statute seems to provide a complete system of legislation on this subject.

184. It shall be the duty of the board of township supervisors, immediately after their organization as a board, to divide their township into one or more road districts; and they shall employ a superintendent for the entire township, or a roadmaster for each district. Township supervisors may require the superintendent or roadmasters to give bond, with approved security, for faithful performance of their duties, and said superintendent or roadmasters shall at all times be subject to removal by the board of supervisors. The township supervisors, from time to time, shall fix the wages to be paid per hour to the superintendent or roadmasters and laborers for work on the roads and bridges: Provided, however, That nothing in this act shall prohibit the board of township supervisors from making a contract for the improvement and keeping in repair of not more than ten miles of road; no contract to extend over a period of more than four years, and no contract to be given unless approved of and signed by at least two of the board of township supervisors. Every contractor for road work shall give bond for the amount of said contract, and sign specifications furnished by the township supervisors for the building and care of such contract roads: Provided also, That nothing in this act shall prohibit the township supervisors should they deem it advisable from overseeing and working on the roads themselves, in part or all of the roads in their townships; in which case they shall not be required to employ a superintendent or roadmasters. The compensation of such supervisors, when overseeing or working on roads, shall be fixed by the township auditors: Pro-

vided, however, That the rate per day shall not be less than one dollar and fifty cents, nor more than three dollars.

Sec. 6, Act of July 22, 1913, P. L. 915.

185. The township superintendent or the roadmasters, under the general direction of the board of supervisors, or the supervisors acting as superintendent or roadmasters, all subject to the rules and regulations of the State Highway Commissioner, shall—

First. Have the general care and superintendence of the improvement of the highways and bridges in the township, except as otherwise specially provided.

Second. Cause such highways and bridges to be kept in repair, and free from obstructions caused by snow, trees, brush, et cetera, and give the necessary directions therefor, and inspect the highways and bridges within the township during the months of April and October of each year, or at such other time as the board of supervisors or the superintendent may direct.

Third. Divide the township into as many sections as may be necessary for the proper maintenance and repair of the highways therein and the opening of highways obstructed by snow.

Fourth. Employ or hire such persons, teams and implements as may be necessary for the proper maintenance and repair of highways and bridges, and the removal of obstructions caused by snow, subject to the approval of the board of supervisors, and provide for the organization and supervision of the persons so employed, and work on the roads themselves when directed to do so by the board of supervisors. Records shall be kept, and reports made and filed, giving the names of all persons so employed, including supervisors, superintendent, or road masters; dates on which work was done, and nature and location of same, with compensation paid to each, and the capacity in which they are employed.

Fifth. Construct and keep in repair sluices and culverts, and cause the waterways, bridges, and culverts to be kept open.

Sixth. Cause loose stones lying in the beaten track of every highway within his township to be removed. Stones so removed shall be conveyed to some place from which they shall not work back, or be brought, back, into the track by road machines, road drags, or by other implements used in repairing or maintaining such highways.

Seventh. Report monthly to the board of supervisors—containing the matter and in the form to be prescribed by the State Highway Commissioner.

Eighth. Attend such road meetings and conventions as may be called, when directed to do so by the board of supervisors.



Ninth. Perform such other duties and have such other powers as may be imposed or conferred by law, or the rules and regulations of the State Highway Commissioner.

Sec. 7, Act of July 22, 1913, P. L. 915.

186. From and after the passage of this act, the township supervisors and road commissioners of the several townships within this Commonwealth shall, by contract or otherwise, remove and take away the loose stones from the traveled roads or highways in such township, at least once each month, during the months of May, June, August and October, in each year.

Sec. 1, Act of July 2, 1901, P. L. 611.

This Act amends Section one of the Act of May 2, 1899, P. L. 164.

See *Blair v. Commonwealth*, 42 Pa. C. C. 353 for dictum to the effect that this act is unconstitutional.

Quaere: Whether this Act is supplied by Section 7 of the Act of July 22, 1913, P. L. 915, supra section 185.

187. In case of neglect or refusal of the supervisors or roads (road) commissioners to carry out the provisions of the first section of this act, (they) shall forfeit and pay for every such offense, neglect or refusal a fine or penalty not exceeding ten dollars, to be recovered by action of debt, in the name of the Commonwealth, before any justice of the peace or alderman of the county, with costs of suit. One-half of such fine to go to the informer or prosecutor, and the other one-half to be applied to repairing the roads or highways of the township.

Sec. 2, Act of July 2, 1901, P. L. 611.

A suit against supervisors for neglect or refusal to carry out the provisions of this Act must be against all the supervisors.

*Blair v. Commonwealth*, 42 Pa. C. C. 353 *supra*.

See Quaere to Section 186, *supra*.

188. The supervisors or road commissioners, as aforesaid, may delegate the authority conferred by this act to the pathmasters, and in any case the compensation allowed to the person or persons performing said work shall be made by crediting the amount upon the road tax assessed against them.

Sec. 2, Act of May 2, 1899, P. L. 164.

189. From and after the passage of this act, the supervisors of the several townships of the second class, throughout this Commonwealth, be and are hereby authorized and empowered, upon the petition of a majority of the real estate owners of any or either of the said townships, to levy and collect, in each and every year from and after the date of the receipt by them of the said petition, an annual tax, upon the assessed valuation of each of the said several town-

ships of the second class for county purposes, in addition to the tax which they are already authorized by law to levy and collect, a special or additional tax, not exceeding a per centum of five mills on each dollar of such assessed valuation, which shall include, not only real estate, but also occupation and all other valuations.

Sec. 1, Act of April 23, 1909, P. L. 168.

A contract between the supervisors and an electric light company for supplying light for township roads, is void under this act where less than a majority of the real estate owners of the township petitioned the supervisors to lay and collect an annual tax to pay for the lighting of the roads.

*Dreese v. Freed*, 42 Pa. C. C. 242.

190. That the money so raised and collected shall be used, laid out, and expended for the following purposes, and none other; namely, for the purpose of properly lighting and illuminating the streets, highways, lanes and alleys, and other public places and property, of the said townships, with electric light, gas, or other illuminating medium, and of defraying the cost, charges and expense thereof. And for such purposes the supervisors of the said townships are hereby authorized and empowered, from time to time, to make and enter into such contract or contracts, agreement or agreements, with any person or persons, company or companies, corporation or corporations, partnership or partnerships, as they may deem necessary, for a period not exceeding five years, for the purpose of securing and maintaining a permanent and sufficient supply of light in, upon, and within the roads, streets, highways, lanes, alleys, property, and other public places of their several townships aforesaid.

Sec. 2, Act of April 23, 1909, P. L. 168.

See note to Section 189, *supra*.

(b) Provisions Relating to Particular Roads and Streets in Both First and Second Class Townships.

(1) State Aid Highways and State Highways Reconstructed and Repaired at Township Expense.

191. The several counties and townships of the Commonwealth, or any of them, either jointly as county and township, or severally, expressing a desire to the State Highway Department, in manner hereinafter required, for State-aid, shall, from and after the passage of this act, be entitled to receive the aid and co-operation of the State in the improvement and subsequent maintenance of any road or highway, in any county or township of the Commonwealth, not herein defined as a State Highway, when complying with the provisions of this act governing same. The State, when granting the aid and co-operation desired, shall not in any case pay more than

fifty (50) per centum of the cost of any road improvement, nor more than fifty (50) per centum of the maintenance thereafter; and the remaining fifty (50) per centum of the cost and expense of improvement shall be paid, to wit: Twenty-five (25) per centum by the county, and twenty-five (25) per centum by the township, when the application for said aid is joint by county and township; and thereafter the township shall pay fifty (50) per centum of the entire cost of maintenance: Provided, That counties or townships may agree between themselves to contribute their joint proportion of the fifty (50) per centum of the total expense of any improvement, herein required to be borne by them, in different proportions from that herein specified. Where any township or county road or highway is desired to be improved by a county or township, without the joint action or co-operation of the other, then said county or township, as the case may be, shall pay the entire fifty (50) per centum of the cost of the road improvement, and fifty (50) per centum of the cost of maintenance thereafter: Provided, That any township desiring the aid and co-operation of the State in the permanent improvement of any of its roads shall levy a cash road-tax to meet the cost of such permanent improvement, and shall levy annually thereafter such further road-taxes in cash as are sufficient to pay the township's share of the annual maintenance of such highways: And provided further, It shall be lawful for any township or county of the Commonwealth to incur indebtedness or to issue bonds, in the manner authorized by law, for the payment of said township's or county's share of the cost of any permanent road improvement or maintenance undertaken under the provisions of this act.

Sec. 21, Act of May 31, 1911, P. L. 468.

192. The State shall not furnish any aid or co-operation in the permanent improvement or maintenance of any county or township road or highway, to be improved as a State-aid highway, until and unless the supervisors or commissioners of the township in which the road desired to be improved lies, where the improvement is intended to be made jointly by township and county, shall first petition the county commissioners of the county, representing that any principal highway, or section thereof, lying within said township, is in need of reconstruction, and setting forth that the said township desires to take advantage of the provisions of this act to improve said highway. It shall then be the duty of said county commissioners to adopt a resolution authorizing the assumption by the county of its share of said improvement; and the said county commissioners shall then promptly petition the State Highway Department for the aid and co-operation of the State as desired for the particular road to be improved. Said petition of the county commissioners shall be



accompanied by the said township petition, and it shall state the desire of both the township and county that said road or highway shall be improved and maintained as a State-aid highway, according to such plans and specifications as shall be prepared by the State Highway Department; that the county and township, or townships, agree to pay fifty (50) per centum of the cost and expense of such improvement, and the township or townships will thereafter, in consideration of the aid and co-operation of the State so granted, pay fifty (50) per centum of the cost of repair and maintenance thereof. Such roads to be at all times under the authority and supervision of the State Highway Department. Said petition shall further state that petitioners, upon approval thereof by the State Highway Department, will enter into an agreement with the Commonwealth, to be approved by the Attorney General or Deputy as to form, which shall embody and contain all matters of detail concerning the improvement, maintenance, and repair of the highway to be improved: Provided, When the aid and co-operation of the State in the improvement of any highway is desired by any county or township, without the intervention of the other, said county or township, if it shall agree to pay one-half of the cost of the improvement and maintenance thereof, shall be entitled to receive the aid and co-operation of the State, in like manner as in cases of joint applications by county and township: And provided further, That no State-aid shall be paid or given, nor shall any work be commenced in the improvement of any road or highway in any township or county of this Commonwealth, until said agreement shall have been duly executed by the respective parties, pursuant to due and legal municipal and corporate action of both township and county; and the State Highway Commissioners shall then advertise for bids, and let contract or contracts for the improvement of the road desired to be improved, in the manner herein provided in the case of improvement of State Highways: And provided further, That the State Highway Commissioner may enter into contracts at any time, in amounts equal to the State appropriation then available, plus the respective shares of the counties or (boroughs).

Sec. 22, Act of May 31, 1911, P. L. 468.

The word "boroughs" in the last line of this section is evidently an error. It is obvious that the legislature had townships in contemplation.

193. In any township of the Commonwealth, wherein the owners of the majority of the assessed valuation of real estate therein shall desire any principal road or highway, being and lying in their said township, to be improved and maintained as a State-aid highway, they may petition the supervisors or commissioners of their said township for said improvement to be made, and require them to pe-



tition the county commissioners of the county to make application to the State Highway Department for the aid and co-operation of the State in the improvement and maintenance of said highway; whereupon the duty of the county commissioners in the premises shall be the same in form and procedure as in other cases hereinbefore provided.

Sec. 23, Act of May 31, 1911, P. L. 468.

194. In all cases where the township supervisors or commissioners or county commissioners refuse to act upon, or unduly delay action on, any petition for the improvement and maintenance of any road or highway as a State-aid highway, any citizen, taxpayer of the township or county, may, by petition, present the facts of the matter to the court of quarter sessions, requesting the court to order such action thereon as the case may require; and if, after due hearing had before said court, it shall appear that the truth of the matters alleged in the petition are sustained, the court shall make an order directing the township supervisors or commissioners, or county commissioners, as the case may be, to forthwith act upon said application or applications for State aid, and that the said application or petition for the improvement be forthwith forwarded to the State Highway Department.

Sec. 24, Act of May 31, 1911, P. L. 468.

195. If within thirty days after the receipt of any petition for highway improvement in any township, under the provisions of this act, a petition signed by the owners of a majority of the assessed valuation of real estate in said township is received by the county commissioners of the county in which said township is located, protesting against said proposed expenditure upon the part of the township, then the county commissioners shall take no action on said petition for improvement, but shall return the same to the township supervisors or commissioners from whom it was received.

Sec. 25, Act of May 31, 1911, P. L. 468.

196. Whenever the county commissioners of any county shall represent by petition to the State Highway Commissioner that any principal highway in said county, outside the corporate limits of any city, is not in a satisfactory condition for comfortable and easy travel at all seasons of the year, and ought to be reconstructed as a State-aid highway, it shall be the duty of the State Highway Commissioner, or any assistant directed so to do, to examine such highway; and if, in the judgment of the State Highway Commissioner, said representation is well-founded, he shall determine what changes should be made in said existing highway, what portion of it shall be improved and in what manner, and shall make the necessary survey,

prepare accurate plans and make detailed estimate of the expense of the work which in his opinion should be done, and report the same to the county commissioners of the county, and the supervisors or commissioners of the township or townships in which said highway may lie. If the said county commissioners and township supervisors, or commissioners, then decide that it is advisable to go on with the work, they, the said county commissioners and township supervisors, or commissioners, shall enter into the agreement with the State Highway Department hereinbefore specified: Provided, however, Said improvement shall not be commenced until the funds at the disposal of the State Highway Department for such purpose shall be sufficient to meet the cost and expense of the improvement desired.

Sec. 26, Act of May 31, 1911, P. L. 468.

197. The State aid authorized by the provisions of this act in the construction of State-aid highways shall be ratably apportioned among the several counties of the Commonwealth by the State Highway Commissioner, according to the mileage of township and county roads in the respective counties, and the said amounts or apportionments shall remain in the State Treasury until applied for in accordance with the provisions of this act: Provided, however, That if, in any case, the amounts or apportionments so apportioned shall not be applied for before the first day of March in each year, the same shall thereupon be ratably allotted to such county or counties as have made application requiring the expenditure of sums, in the improvement of State-aid highways, greater than the amount of their apportionment.

Sec. 27, Act of May 31, 1911, P. L. 468.

198. All highways improved as State-aid highways shall conform to the provisions of this act and the rules and regulations of the State Highway Department as provided in case of State Highways: Provided, That no section of State-aid highways improved under this act shall be less than one-half mile in length, nor shall the improved portion thereof be less than twelve feet in width.

Sec. 28, Act of May 31, 1911, P. L. 468.

199. The work of maintaining and repairing all State-aid highways, improved under the provisions of this act, or which shall have been previously reconstructed by State aid, shall be done by the State Highway Department; and fifty (50) per centum of the cost thereof shall be paid by the several townships wherein such roads may lie; or by the county, when such roads have been improved upon the petition of such county without the co-operation of the township.

Sec. 29, Act of May 31, 1911, P. L. 468.

200. Where a portion of a highway traversing one or more townships, and for the improvement and maintenance of which as a State-aid highway, according to the provisions of this act, application has been made by said township or townships, shall lie within the limits of or traverse any borough or boroughs, or any incorporated town or towns, and where the failure of said borough or boroughs, or incorporated town or towns, to improve the said highway would leave a break or unimproved section in a continuous improved highway, it shall be lawful for the county commissioners of the county in which said highway is located to enter into an agreement with said borough or boroughs, or incorporated town or towns, to bear a portion of the expenses of said improvement of the highway within the limits of the said borough or town, in the same manner as herein provided for the co-operation between the counties and townships: Provided, That an improved road shall have been previously constructed in an adjoining township, borough, or town to the lines of the borough or town making application or petition for such improvement, the State Highway Commissioner is authorized to bear a portion of the expense of said improvement of said highway within said borough or town limits; but in no case shall the portion of said expense to be borne by the State exceed fifty (50) per centum of the total expense of said improvement. Boroughs or incorporated towns shall only receive aid from the State, as aforesaid, in cases where failure to receive such aid would prevent a continuous improvement of an important State-aid highway: Provided, That any borough or incorporated town which is willing to pay one-half the cost of constructing any such road hereinbefore mentioned, may make application direct to the State Highway Department. All improvements made in borough or town highways, as herein provided, shall be of a character similar to that specified for the township or townships through which the highway to be improved passes in reaching said borough or town: Provided, however, That the council of any borough or boroughs, or incorporated town or towns, through which such highway passes, shall, before its construction, by proper ordinance, enter into an agreement with the State Highway Commissioner for the payment of said borough's or town's share of the cost of construction and of the subsequent maintenance of such portion of said State-aid highway as lies within the limits of said borough or town, similar to that required elsewhere in this act of the commissioners or supervisors of townships.

Sec. 30, Act of May 31, 1911, P. L. 468.

This section, while applying to boroughs and incorporated towns rather than to townships, has nevertheless been incorporated in order that the law relative to State-aid roads may appear in its entirety.



201. Any (county), township, (borough, or incorporated town) may, through its commissioners or supervisors (or councils), bid for the construction or improvement of such portion of any State-aid highway, undertaken under the provisions of this act, as may lie within its limits; and any (county,) township, (borough, or incorporated town) submitting such bid shall have the same consideration, and shall be governed by the same rules and regulations of the department, as in the case of other bidders; and, if awarded the contract, shall fulfill the same, and be subject to the same conditions and regulations as herein provided for other contractors.

Sec. 31, Act of May 31, 1911, P. L. 468.

202. Where any person or corporations shall sustain damage by the taking of land to alter the location of any State-aid highway which may be improved under this act, and the county commissioners and township supervisors or commissioners and parties so injured cannot agree on the amount or damage sustained, such persons or corporations may present their petition to the court of quarter sessions for the appointment of viewers to ascertain and assess such damages; and the form and procedure therein shall be governed by existing laws relating to the assessment of damages in opening public highways; and such damages, when ascertained, shall be paid,—fifty per centum (50) by the State, and twenty-five per centum (25) by the township: Provided, Where the land so taken is in connection with the improvement of State-aid highway, which is being done upon the petition of township or county alone, and not jointly by the township and county, then fifty per centum (50) of the damages sustained shall be paid by the county or township.

Sec. 32, Act of May 31, 1911, P. L. 468.

203. The total cost of the improvement and maintenance of the State-aid highways constructed under the provisions of this act, as provided by the terms of the contract, or otherwise as herein provided, when properly certified by the State Highway Commissioner, shall be audited by the Auditor General, and when audited and allowed shall be paid out of moneys specifically appropriated for this purpose, by warrants drawn therefor by the Auditor General upon the State Treasurer. The share of the county shall be paid as provided by its contract, and, otherwise, by the provisions of this act, to the State Treasurer by the county treasurer, upon the warrant of the county commissioners, in such sum or sums as shall be certified by the State Highway Commissioner, from time to time, during the performance of the work or contract, or as provided by the contract, and, otherwise, by the provisions hereof, after the same shall be completed. The share of the township or townships, (or of any borough or boroughs, or of any incorporated town or towns,) shall be paid



to the State Treasurer by the township supervisors or commissioners, (or by the borough treasurer or by the town treasurer,) as the case may be, in the manner and form as in the case of counties, and as other debts of said townships (or boroughs) are paid, when and as demanded by certificate of the State Highway Commissioner during the performance of the work or contract, or, in like manner, after the same shall be completed. Upon the completion of any State-aid highway improvement, or upon the ascertainment of any additional improvement cost, or of any maintenance expense, incurred thereon thereafter by the State Highway Department, the State Highway Commissioner shall certify the same to the State Treasurer, and to the county commissioners and township supervisors, (or borough or town authorities,) as the case may be, the respective shares of said cost or expense for which the county, township, (borough, or incorporated town) is liable. If the said shares or amounts, so certified by the State Highway Commissioner, of the cost and expense of the improvement, or of the subsequent maintenance thereof, as provided by contract and the provisions of this act, of the county, township, (borough or incorporated town, or all) or either of them, shall not be paid to the State Treasurer within thirty days after being certified, then the said shares of the county, township, (borough or incorporated town,) either or all of them, remaining unpaid, shall be charged by the State Treasurer against any funds of said county, township, (borough, or incorporated town) which may be in the hands of the State Treasurer, or which may thereafter come into his hands, excepting school funds, and may also be recovered by action at law or equity as may other debts of such (counties,) townships, (boroughs, or incorporated towns) are by law recoverable. The amounts paid under this act to the State Treasurer by the (counties,) townships, (boroughs, and towns) shall be placed by him to the credit of the proper fund for highway construction or maintenance, and shall immediately be available for the use of the State Highway Department for construction or maintenance, as the case may be; and the State Highway Commissioner is hereby authorized and empowered to apportion the said amounts, thus paid into the State Treasury by the counties, townships, boroughs, and incorporated towns, among the several counties as hereinbefore provided for. The State Highway Commissioner may make partial payments to any contractor performing any highway improvement, under this act, as the same progresses, upon estimate made by the State Highway Department; but not more than ninety per centum (90 per centum) of the estimate of work done, or of the contract price, shall be paid in advance of the full and satisfactory completion of said improvement, and acceptance of same by the State Highway Commissioner.

204. The word "highway," as used in this act, shall be construed to include any existing causeway or bridge, or any new causeway or bridge, or and drain or watercourse, which may form part of a road, and which has been or might properly be built, according to any existing laws, by the townships of the Commonwealth. A "State-aid highway," as the term is used in this act, shall be construed to mean only such highway as is improved with the aid and co-operation of the State with county and township, or with county or township, borough or incorporated town, either or severally, as the case may be, according to the terms and provisions hereof; but shall not include any causeway or bridge which should properly be built by the county or by the State, under existing laws.

Sec. 34, Act of May 31, 1911, P. L. 463.

205. All State-aid highways, under the provisions of this act, shall be marked, and suitable sign-boards erected and maintained at crossroads, as provided in the case of State Highways, and the same shall be paid for as part of the cost and maintenance of the highway.

Sec. 35, Act of May 31, 1911, P. L. 468.

206. The State Highway Commissioner shall compile and prepare a plan, or plans, of all State-aid highways in the Commonwealth, which shall show and contain all the information required to be shown and contained upon the maps or plans of State Highways, so that the department shall at all times have a complete record of the same. In order that the said plan or plans of State-aid highways may be authentic and complete in all respects, the county commissioners or county engineers of the several counties of this State, and officials of all (cities, boroughs, towns, and) townships in the State, which now have, or may hereafter have by law, authority over the public highways and bridges, shall, upon written request of the State Highway Department, furnish said department with any information relating to the mileage, cost of building and maintenance, condition, and character of the highways under their jurisdiction, and with any other needful information relating to said highways.

Sec. 36, Act of May 31, 1911, P. L. 468.

207. All money at any time appropriated for the use of the State Highway Department, for the improvement and maintenance of State-aid or State Highways, shall always remain for the use of the department until the same is entirely used and applied to the purpose or purposes for which it was appropriated.

Sec. 39, Act of May 31, 1911, P. L. 468.

208. The State Highway Commissioner is hereby authorized to make and enter into contracts for the reconstruction or improvement of any section of a State Highway for which an application has been,

or which may hereafter be, made, by any (county,) township, (borough, or incorporated town,) or by any county and township, (county and borough, or county and incorporated town,) asking that such section of State Highway be reconstructed or improved in the same manner as a State-aid Highway, and agreeing to pay its or their respective share of the total cost of said reconstruction or improvement, as provided for in section twenty-two of the act to which this is a supplement, or upon such other terms and conditions as to the sharing of the total cost of said reconstruction or improvement as may be agreed upon between the State Highway Commissioner and any such (county,) township, (borough, or incorporated town,) or between the State Highway Commissioner and any such county and township, (county and borough, or county and incorporated town,) but, otherwise, as provided in section twenty-two of the act to which this is a supplement.

Sec. 1, Act of June 5, 1913, P. L. 417.

This Act is a supplement to the Act of May 31, 1911, P. L. 468.

The Section twenty-two referred to in this Section appears in Section 192 supra.

209. The several (counties,) townships, (boroughs, or incorporated towns) in the Commonwealth that have made, or which may hereafter make, several or joint applications for the reconstruction of a State Highway, or any portion thereof, as a State-aid Highway, are hereby authorized to incur such indebtedness in the proportions agreed upon, as aforesaid, and to pay their respective shares of the cost thereof as provided for in the act to which this is a supplement.

Sec. 2, Act of June 5, 1913, P. L. 417.

This Act supplements the Act of May 31, 1911, P. L. 468.

210. All work authorized under this supplement shall be done under contract, as provided for and set forth in the act to which this is a supplement, and the section or sections of State Highway so reconstructed or improved shall be and remain a State Highway.

Sec. 3, Act of June 5, 1913, P. L. 417.

This Act supplements the Act of May 31, 1911, P. L. 468.

## (2) Roads on State Boundaries.

211. If the legislature of the state of Ohio shall concur, that for the purpose of opening and keeping in repair any road now or hereafter to be laid out, by authority of law, on the line between the states of Pennsylvania and Ohio, it shall be the duty of the road supervisors, or other officer or officers having charge of the public roads in any two adjoining townships through which such road may pass, one of which shall be on either side of said line, to meet annually on the first day of April, or as soon thereafter as con-



veniently may be, and lay off so much of said road as shall lie between such adjoining townships, into sections not exceeding one mile in length, as they may think most convenient, and suitably mark the same, and divide said sections equally between said adjoining townships, and cause a record thereof to be made on the book of the township clerk of said adjoining townships, respectively; and it is hereby made the duty of said clerks to make such record; and thenceforth it shall be the duty of such supervisors, or other officer or officers as aforesaid, to open and keep in repair such portion or portions of such road, as may thus be allotted to the township of which they may be supervisors, or other officers as aforesaid, respectively, under the same penalties as (are) or may be imposed upon such officers by the road laws of said states, respectively.

Sec. 1, Act of March 30, 1848, P. L. 308.

The word (are) has been inserted. It does not appear in the original text.

### (3) Turnpike and Planks Roads.

212. The several supervisors of the public highways of their respective townships in this Commonwealth are hereby severally authorized and empowered to subscribe for so much capital stock in such turnpike companies, who have constructed, or may hereafter locate and construct, any such turnpike road through such township, as may be agreed upon by the tax-payers of said respective townships.

Sec. 7, Act of April 5, 1842, P. L. 230.

This act does not seem to be repealed by Article IX, Section 7 of the Constitution prohibiting the General Assembly from authorizing inter alia any township to pledge or loan its credit to any corporation, etc. See *Indiana Co. v. Agricultural Society*, 85 Pa. 357.

213. Where any such turnpike as aforesaid may now pass, or hereafter be constructed, or that when any turnpike company may contemplate to make a turnpike road through any of such townships, it shall be the duty of the respective supervisors of such townships, as often as may be required by request made in writing by at least twelve tax-payers of said township, to cause public notice to be given on a day therein mentioned, by at least six printed or written advertisements, affixed at as many of the most noted places in said township, at least one week before said day, that an election will be held on said day, at the usual place where the township elections are held, to elect township officers; said election to be opened between the hours of one and two o'clock of that day by said supervisors, to be assisted by two qualified citizens, chosen by such citizens qualified to vote as shall then be present, who shall be judges of said election; and such citizens of said township qualified to vote at a general



election shall, between the hours of one and six o'clock of that day, decide by ballot for or against accepting the provisions of this act, and at the same time decide by ballot the amount of stock to be subscribed for on behalf of said township; the acceptance and the non-acceptance of this act, and the amount of stock to be subscribed for, shall be governed by the majority of votes at any such election, and the said judges and supervisors shall make duplicate returns under their hands of all such elections, one to be retained by the supervisors, and the other delivered to the president of such turnpike company, who may have constructed, or about to construct such turnpike through said township, and if there should be a majority of votes at any such election in favor of accepting the provisions of this act, it shall be the duty of the supervisors of such townships on behalf of the citizens thereof, to subscribe for so much capital stock in such turnpike company as may have been agreed upon at such election, and shall assess such an amount of tax on the citizens of such township as may be requisite for the disbursement of the same, to be assessed and collected in such manner as is provided for taxes to be levied and collected to keep the public highways in repair; and it shall be the duty of the several supervisors of such townships to receive all dividends and emoluments arising on such stock, and apply the same towards keeping the public highways in such township in repair, and such supervisors shall receive such compensation for their services, that they may be entitled to receive for like services in said township.

Sec. 8, Act of April 5, 1842, P. L. 230.

214. In case of either the abandonment for any length of time, or of the condemnation, in the manner prescribed by law, of the whole or any part of any turnpike road in this Commonwealth, except the Susquehanna and Tioga turnpike, it shall be the duty of the supervisors of each township through which the same may pass, forthwith, to take charge of, and put in good order and repair, such part of any such road as may be in their respective townships, and from time to time maintain and keep in good order, all such parts of said roads, in the same manner as if the same were county roads; and in case of a failure to do so, shall be liable to all the provisions of law which relate to county roads.

Sec. 8, Act of April 19, 1844, P. L. 314.

215. From the time of either the abandonment or condemnation of the whole or any part of any such road, the portion so abandoned or condemned shall be considered a county road, and free of all tolls, until such time as the company claiming the same, shall pay to the supervisors of said townships, for the use of each thereof, all such

sums of money, and for all labor by each expended in keeping their respective parts of such roads in repair and good order, and each of said supervisors shall keep an accurate account, in a book for that purpose, of all such expenditures in money and labor, and at the expiration of their respective term of office, deliver the same to their respective successors in office.

Sec. 9, Act of April 19, 1844, P. L. 314.

216. The provisions of the eighth and ninth sections of an act, approved April nineteenth, one thousand eight hundred and forty-four, (P. L. 314), entitled "An act concerning certain State and turnpike roads," be and the same are hereby extended to plank roads: Provided, That whenever the charter of any turnpike or plank road company has been or shall be repealed, it shall not be necessary for supervisors of townships to keep an account of the expenses incurred upon the turnpike or plank road of such company.

Sec. 1, Act of March 16, 1867, P. L. 37.

Sections 8 and 9 referred to in this section appear in Sections 214 and 215 *supra*.

217. Where any turnpike or plank road has been abandoned, in whole or in part, for not less than five years, the proportion so abandoned, if not kept in proper repair by the township authorities, shall, upon due application to the proper court, after hearing, and decree that the road has not been kept in proper repair, revert to the owners thereof in fee simple, or if kept in proper repair by the township authorities, shall be subject to the same uses as other township roads, and may be occupied or appropriated like them under the right of eminent domain.

Sec. 1, Act of June 11, 1879, P. L. 126.

218. Upon the abandonment, for any length of time, of the whole or any part of any turnpike or plank road, or in case any turnpike or plank road company, or any lessee or lessees, purchaser or purchasers of such road, shall neglect or refuse to keep their road in good order and repair, for the space of thirty days, and proceedings instituted under the fourteenth, fifteenth and sixteenth sections of the act to which this is a supplement shall result in a finding, by the inquest, that such road, or any part thereof, is out of order and repair, and no appeal shall be taken to the Court of Common Pleas, or if upon such appeal the finding of the inquest and judgment of the justice shall be affirmed, it shall be the duty of the supervisors of each township through which the road or the part thereof so abandoned, or so found to be out of order and repair, may pass, forthwith to take charge of, and put in good order and repair such part or any such road as may be in their respective townships, and from time to

time maintain and keep the same in good order, in like manner as if such road was a county road; and the same, or so much thereof as may be so abandoned, or so found to be out of order and repair, shall thenceforth be considered as a county road, free of tolls, until such time as the company, or other persons claiming the same, shall pay to the supervisors of said townships, for the use of said townships respectively, all sums of money, and for all labor, with interest, by the several supervisors expended upon such road. Provided however, That in case of a plank road the supervisors shall not be bound to rel-ay or repair the plank, but may work and repair and keep in good order such road, and the same as if it were an ordinary county road.

Sec. 2, Act of April 5, 1870, P. L. 48.

This act supplements the Act of January 26, 1849, P. L. 10.

219. When any turnpike, or portion thereof, shall have been condemned, under the provisions of this act, for public use, free of tolls or toll gates, and the assessment of damages therefor shall have been paid by the proper county, such turnpike, or portion thereof, shall be properly repaired and maintained at the expense of the proper (city,) township or district, as other public roads or streets therein are by law repaired and maintained.

Sec. 11, Act of June 2, 1887, P. L. 306.

This section embraces bridges in the line of such condemned turnpike.

*"Bridge on Bedford and Stoystown Turnpike Road, 14 Pa. C. C. 296.*

This act is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

220. When any turnpike, or portion thereof, shall have been condemned, under the provisions of this act, for public use, free of tolls or toll-gates, and the assessment of damages therefor shall have been paid by the proper county, such turnpike, or portion thereof, shall be properly repaired and maintained at the expense of the proper (city,) township or district, as other public roads or streets therein are by law repaired and maintained.

Sec. 11, Act of April 28, 1899, P. L. 79.

This act supplements the Act of June 2, 1887, P. L. 306.

This sections is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

The turnpike condemned under this act, the maintenance of which is imposed upon the township by this section, is one which lies wholly or in part upon the line dividing two counties. See section one of the Act of April 28, 1899, P. L. 79.

221. It shall become the duty of such road supervisor or supervisors, or other public officer or officers as aforesaid, as the case may be, to take charge forthwith of the portion or portions of road thus abandoned, and to care for the same in the same manner as is required



by law in regard to other public roads within such township or townships, (city or cities, or borough or boroughs,) said portion or portions of road to be thereafter treated as a public road or road until and unless the same should thereafter be vacated by proper proceedings, under the laws relative to the vacation of public roads.

Part of section 2, Act of June 4, 1901, P. L. 359.

This sections is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

This Act provides that whenever an intermediate portion or portions of any turnpike road is appropriated to the public use free from tolls leaving a portion of the turnpike road in possession and ownership of the turnpike company but separated by such appropriated part from a longer portion of the road, which longer portion is also in possession and ownership of such turnpike company, that the company may abandon, by the procedure provided, the shorter portion of the road. It is this abandoned portion to which the section above has reference.

The above duty of the supervisors, etc., commences upon the receipt by them of a written notice from the turnpike company that a portion of the road has been abandoned pursuant to the authority of the act.

#### (4) Roads in Special Townships.

222. Where a public (or State) road has been heretofore authorized to be surveyed, laid out and constructed by any special act of the general assembly of this Commonwealth, and more than six years have elapsed since the passage of said act, and all of said road deemed of use and benefit to the inhabitants residing along the route of said road has been constructed, it shall not be lawful for the supervisors of the township or townships in which said road is in whole or in part situated, to build the unconstructed portion of said road, unless a majority of the voters of said township or townships, in which said unconstructed portion is situated, at the township election next succeeding the passage of this act, or within two years thereafter vote in favor of the completion of the portion of said road remaining unconstructed at the passage of this act: Provided, That the same length of public notice shall be given prior to the holding of any election under this bill as is now given for township elections and in the same manner: (Provided further, That the provisions of this act shall not extend to any State road where the time has expired for its construction.)

Sec. 1, Act of May 2, 1876, P. L. 95.

223. In the several counties of this Commonwealth, where by existing laws the duty of laying out public roads or highways is imposed upon the supervisors or commissioners of roads and highways of the respective townships, it shall be the duty of said supervisors or commissioners whenever they have decided to report in favor of lay-



ing out a road, to notify the auditors of the said township of such decision; and thereupon the said supervisors or commissioners together with said auditors, shall endeavor to obtain releases from claims for damages as is provided in the act to which this is a supplement, and upon their failure to procure such releases from all the persons through whose improved land they have decided to lay out a road, it shall be their duty to assess the damages, if any have been sustained by the persons not releasing as aforesaid, and to file the same and all releases obtained with their report in favor of opening said road with the clerk of the proper township; and any person interested who may feel aggrieved by the assessment of damages to him, may at any time after said reports have been filed and within thirty days after said road has been opened, appeal from said assessment of damages to him in the manner now provided by law: Provided however, That whenever a continuous road or highway through different townships is laid out, said releases shall be obtained or damages assessed by the supervisors or commissioners and auditors of the township in which the improved land lies through which said road or highway is laid.

Sec 1, Act of May 8, 1876, P. L. 145.

This act supplements the Act of May 14, 1874, P. L. 164.

The Provisions of this act obviously relate to special townships, as the power to lay out roads by supervisors is not derived from any general statute.

224. Where roads have heretofore been laid out by said supervisors or commissioners, but not opened, and neither releases obtained nor damages assessed it shall be the duty of the clerk of the proper township upon the request, in writing, of any one interested, to notify the supervisors or commissioners and auditors of the township of said request, and it shall, therefore, be the duty of said supervisors and auditors or commissioners and auditors, as the case may be, as soon as practicable, to endeavor to obtain releases or assess damages as is provided in section one of this act and file the same, with said clerk, and upon their being so filed, they shall have the same effect as if filed with the report laying out the road: Provided, That this act shall not be so construed as to repeal any local or special law.

Sec. 2, Act of May 8, 1876, P. L. 145.

This act supplements the Act of May 14, 1874, P. L. 164.

225. Whenever the road commissioners of any township are by law invested with the authority and power to lay out, open, or vacate public or private roads in their respective townships, or, in case of appeal, road commissioners from other townships than that in which the road lies, and no appeal to any court is otherwise provided

for, it shall be lawful for, and the duty of, the court of common pleas of the respective counties to issue (a) writ, in the nature of a writ of certiorari, directed to the commissioners of the township in which the road lies, and to the town clerk having in charge the record of such road, commanding that a certified copy of the record and all the proceedings had in the matter of laying out or vacating any road shall be forthwith sent to the said court, under the hand and seal of the said town clerk; and the said court may examine the same as to the regularity of the proceedings had, and the jurisdiction of the road commissioners, either of the township in which the road lies, or from other townships, in case an appeal has been had; and if such proceedings are contrary to law, or if the return made to the town by the road commissioners, either in laying out or vacating a road is not according to law, or if the road commissioners are for any reason without jurisdiction, or for any reason incapacitated to act in the particular case, the said court shall set the said proceedings aside, either in whole or in part, and such proceedings shall then be void and of no effect so far as set aside. An appeal shall lie from the order of the court, either in confirming the proceedings or setting them aside, as in other cases. And in case the regularity of the proceedings be sustained by the court, a jury trial may be held in said court, to determine all questions of fact involved, with the right to either party to enter exceptions and appeal to the Superior and Supreme Courts, as in other cases.

Sec. 1, Act of June 9, 1911, P. L. 742.

This act amends Section 1 of the Act of July 2, 1901, P. L. 607.

The Act of July 2, 1901, P. L. 607, is constitutional. *Earl v. Ryan*, 41 Super. Ct. 448.

A report of reviewing road commissioners in proceedings under this act, signed by only two of the three commissioners, and not showing on its face that all of the commissioners participated in the review, is not fatally defective.

*Farrel Road*, 35 Super. Ct. 86.

See *East Twelfth Street*, 42 Pa. C. C. 514, in which the court intimates that under this section a jury trial may be obtained for ascertaining facts relative to the widening of streets under special acts.

This act does not authorize the court by mandamus to the reviewers, to cure fatal defects in their report, or failure by them to comply with the provisions of the statutes and legal requirements in such proceedings.

*Overton Township Public Road*, 12 D. R. 317.

226. The court shall provide by appropriate rules the manner of issuing such certiorari, the practice to be followed in disposing of the same, and shall direct who shall pay the costs of the proceeding on the certiorari.

Sec. 2, Act of July 2, 1901, P. L. 607.

227. The writ of certiorari issued in pursuance of this act shall be a supersedeas, but no such writ shall issue after thirty days after the report of the road commissioners, of the township in which the road lies, or the report of the road commissioners of other townships in case of an appeal, has been filed with the town clerk.

Sec. 3, Act of July 2, 1901, P. L. 607.

228. When any local or special law in any of the townships of this Commonwealth, which provided for the laying out, opening and keeping in repair the several roads in the same, or which provided for the levying, assessment and collection of road taxes, has been or shall hereafter be repealed, then and in every such case the general road law shall apply to, govern and control the said township, the same as though they have never been acting under or affected by any such local or special law.

Sec. 1, Act of June 10, 1881, P. L. 105.

THE FOLLOWING NAMED SECTIONS ALSO CONTAIN LEGISLATION APPLYING TO ROADS IN SPECIAL TOWNSHIPS, TO WIT: SECTIONS 88, 89, 116, 136, 137, 138, 139, 140, 152, 186, 187, 188.

(c) Bridges.

229. It shall be the duty of the supervisors aforesaid, in making and repairing the public roads, to make and maintain within their respective townships, sufficient causeways of stone or timber, on marshy or swampy grounds, and also to make and maintain sufficient bridges over all small creeks and rivulets and deep gullies, where the same shall be necessary for the ease and safety of travelers.

Sec. 31, Act of June 13, 1836, P. L. 551.

It is the duty of the supervisors under this section to provide foot-bridges when necessary for the accommodation of travelers using public highways crossing streams or rivulets, if it is practicable and can be done without too great expense to the township.

*Billman et al., v. Supervisors of Carroll Township, 1 Pa. C. C. 129.*

This section seems to comprehend townships of the first class under Section 47, *supra*.

The Acts of March 24, 1909, P. L. 67, and March 24, 1909, P. L. 69, authorize municipalities to purchase, condemn, maintain and use public toll-bridges crossing rivers or streams within the limits of such municipality. While it has been held in *Dare v. Co. Com.*, 23 Pa. C. C. 646, and *Dreese v. Freed*, 42 Pa. C. C. 242, that the term municipality includes a township, it is felt this power is so foreign to the power of a township that these acts have not been included in this text.

230. Where a small creek, over which a bridge may be necessary, shall be on the boundary or on the division line of townships, the bridge shall be built and maintained at the joint and equal expense of the said townships, by their respective supervisors, in the manner directed by law in the case of public roads, which may be the division line of townships.

Sec. 34, Act of June 13, 1836, P. L. 551.

This section seems to apply also to townships of the first class under Section 47, *supra*.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312, pursuant to *Pottsville Borough v. Norwegian Township*, 14 Pa. 543, and *Goldsborough v. Township of Coolbaugh*, 87 Pa. 48, which held this section applies not only in the case of townships, but also in case the stream is between inter alia a township and a borough. See also *Trickett's "Pennsylvania Borough Law,"* page 209, Section 167.

Where a bridge crosses a stream dividing townships, the duty of maintaining it is on the townships jointly.

*Rapho v. Moore*, 68 Pa. 404.

231. The provisions of the laws of this Commonwealth relative to the erection of bridges over rivers, creeks or rivulets, be and the same are hereby extended to the erection of bridges over canals and railroads: Provided, That bridges erected under the provisions of this act shall not obstruct any canal or railroad over which such bridge may be erected: And provided further, That nothing in this act shall release railroad, or other companies, or the commonwealth, from the requirements of existing laws.

Sec. 1, Act of April 12, 1855, P. L. 220.

For the act referred to see *supra* Section 229 and 230.

This section seems to apply also to townships of the first class under Section 47, *supra*.

232. When the building of a county bridge over a river, creek, or rivulet, railway or canal, has been found necessary by report of viewers, by the court, and by the grand jury, under proceedings as provided by existing laws, and it has also been found, in like manner, that the erection of such bridge will require more expense than it is reasonable that the one or more adjoining townships (or city of the third class) should bear, that whenever the county commissioners do not deem it advisable to enter such bridge on record as a county bridge, but shall consider it proper to assist such township or townships, (or such city of the third class,) in building the same, they are hereby authorized and empowered, from and out of the county funds, to either build such bridge, or any portion or portions thereof, or furnish such township or townships, (or city of the third class,) the



hole or part of the money necessary to build it, without entering  
each bridge on record as a county bridge.

Sec. 1, Act of June 15, 1911, P. L. 970.

This act amends Section 1 of the Act of June 11, 1879, P. L. 146, as amended by the Acts of May 25, 1887, P. L. 267, and March 27, 1903, P. L. 74.

233. The county commissioners shall keep a record of all their proceedings in such cases, and such bridges shall be maintained, kept in repair and rebuilt, when necessary, by the respective township or townships, and the county shall in no event be liable for the same.

Sec. 2, Act of June 11, 1879, P. L. 146.

This act in its original terms did not apply to cities of the third class. The amendment of 1903 in extending its provisions to such cities failed, evidently through inadvertance to amend Section Two so as to provide for the maintenance, repair and reconstruction of a bridge originally constructed under this act in a city of the third class.

234. The several townships of the first class of this Commonwealth are hereby authorized to locate and build viaducts or bridges, to be used as public highways, over railroads, rivers, creeks, streams, and private property, or over and across railroads, and any of them, or over and across railroads, whether the said viaducts or bridges be wholly within, or partly without and partly within, the township limits, for the purpose of uniting two or more different streets or highways, or separate portions of the same highway or extension thereof: Provided, That the said viaducts or bridges must, in all cases, cross the aforesaid railroads; and that, in all other cases, any viaduct or bridge shall be erected in the manner provided by existing laws for the erection of such viaducts or bridges in the several townships of this Commonwealth.

Sec. 1, Act of June 15, 1911, P. L. 987.

This section applies only to first class townships.

235. The said townships shall have the right to enact ordinances providing for the laying out and opening of the routes or locations for said viaducts and bridges, which shall be public highways; and the proceedings for the said laying out and fixing locations, and for the opening thereof, shall be the same as is provided by law in the laying out and opening of streets in said townships, except that no petition of property owners shall be required therefor.

Sec. 2, Act of June 15, 1911, P. L. 987.

For proceedings referred to see supra Sections 154 to 167. This section applies only to first class townships.

236. In case the said respective township has not agreed with the owner or owners for the damages done, or likely to be done, by the

erection of said viaduct or bridge, it shall be lawful for the said township to take and appropriate the lands and property necessary over and across which to erect said bridge or viaduct; and the damages and benefits caused by the said taking and appropriation shall be assessed by three freeholders as viewers, appointed by the court of common pleas, in the same manner and with like proceedings as is now or shall hereafter be provided by law in the opening of public streets.

Sec. 3, Act of June 15, 1911, P. L. 987.

This section applies only to first class townships.

237. The said township shall also have the power to enter into and unite in a contract or contracts with the county commissioners of the proper county, and also with railroads, street railways, and other companies and parties interested, or with any or all of them, for the building, construction, and maintenance of said viaduct or bridges, or for certain parts or portions thereof, and for the payment of any damages caused by the location and the said erection.

Sec. 4, Act of June 15, 1911, P. L. 987.

This section applies only to first class townships.

238. When the said viaduct or bridge crosses a river, creek, or stream, or other place, over which the county is authorized by law to build bridges, the said county commissioners may contract, subject to the approval of the court of quarter sessions of the proper county, for that part or portion of the viaduct or bridge which crosses any of the places, hereinbefore mentioned, over which the county is authorized by law to build bridges, including the abutments and piers thereof, and such parts shall thereafter be maintained as a county bridge; or, they may contract for such part or portion of the whole structure as is equal to the part or portion of the viaduct or bridge over the respective river, creek, stream, or other place, as aforesaid: Provided, however, That in such cases, the said county commissioners may contract to pay an amount of money greater than that which is hereinabove provided for, toward the construction of the entire structure; but the amount of the said additional moneys, over and above the amount necessary to build the bridge or viaduct across the respective river, creek, stream, or other place, shall be first approved by the court aforesaid. When the said viaduct or bridge shall not cross a river, creek, stream, or other place, aforesaid, but shall cross merely railroads, or railroads and private property the said county commissioners may contract, subject to the approval of the aforesaid court, to pay an amount of money not exceeding thirty per centum of the entire cost of the proposed viaduct or bridge; and such viaduct or bridge shall thereafter be maintained as a township structure by the township, which shall be authorized to contract (with) any of the

parties interested, except the county aforesaid, for the maintenance of the same.

Sec. 5, Act of June 15, 1911, P. L. 987.

This section applies only to first class townships.

The word (with) near the end of the section has been inserted. It does not appear in the pamphlet laws.

239. The contracts herein provided for may stipulate that the respective township, county, railroad company, street railway, or other company or parties interested, or any of them, shall pay a certain part or portion of the whole contract price or cost of the work, including damages; or may stipulate that each shall construct, or pay for the construction of, a certain part or portion of the work, and may otherwise provide for the payment of the damages. When any railroad company, street railway, or other company, or other parties interested, agree to pay a certain part or portion of the cost of the entire work, they shall pay such part or portion into the proper township treasury; and upon said payment the township treasurer shall be liable therefor, and he shall pay the same to the contractors, as may be provided in the contract; but the amount to be paid by the respective county shall be paid directly to the contractor, as may be provided by said contract. The said agreements may also provide for the maintenance of the said viaducts and bridges after their erection. All contracts provided for by this act shall be binding upon the parties thereto, their lessees, successors, heirs, and assigns.

Sec. 6, Act of June 15, 1911, P. L. 987.

This section applies only to first class townships.

240. Before any railroad, which has not contributed to the payment of the cost of construction of said viaduct or bridge, shall be permitted to run its line or lines of tracks under or upon said bridge or viaduct, it shall enter into a contract with the said township to thereafter pay a reasonable amount, part, or portion toward the keeping up and maintaining of the said structure, which amount shall be at the same rate, (and) on the same basis, as is paid by the other railroad companies.

Sec. 7, Act of June 15, 1911, P. L. 987.

This section applies only to first class townships.

The word (and) near the end of the section has been inserted. It does not appear in the pamphlet laws.

241. Whenever the township, county commissioners, and the said railroad, street railway, and other companies and others interested, or any of them, have entered into a contract or contracts for the construction of said bridge or viaduct, as is hereinbefore provided, it shall be lawful for the said township and the said county commis-



sioners to have prepared plans or specifications of the entire work and thereafter to advertise for bids, and to award the contract to the lowest responsible bidder. The contract for the said work shall provide that the county shall pay for its certain part of said bridge or viaduct, and the township shall contract for the other part of the said work; but the said contract as to the township's part thereof shall be based upon the appropriation made by the township for the part of the work for which it had agreed to pay, and the remaining part of the contract price shall be based upon the amount the other parties have agreed to pay; and the contractor shall have the right of action against each party uniting in said contract for the part thereof agreed to be paid by each party respectively, as set forth in the contract or contracts in which all the parties unite as aforesaid.

Sec. 8, Act of June 15, 1911, P. L. 987.

This section applies only to first class townships.

242. In case the county commissioners do not unite in any such contract, as is hereinbefore provided for, or in case said viaduct does not cross any river, creek, stream, or place, over which the county is authorized to build bridges, it shall be lawful for the said township to contract for the construction of the viaduct as aforesaid, and to pay for the entire work, or to contract with all or any other of the aforesaid parties, in manner aforesaid; in which case the plans and specifications for the said work shall be prepared by the township, and advertisement shall be made for bids, and the contract let in the manner hereinbefore provided. The contract for the work shall be based upon the township's appropriation, and upon the amounts agreed to be paid by the other parties, as provided in the preceding section.

Sec. 9, Act of June 15, 1911, P. L. 987.

This section applies only to first class townships.

243. Any of the contracts hereinbefore provided for may be recorded in the recorder's office of the proper county in which the respective township is situate, and such record shall be notice to all persons who might be affected thereby.

Sec. 9, Act of June 15, 1911, P. L. 987.

This section applies only to first class townships.

244. No bridge, frame or device whatsoever, shall, at any time to come, be made, erected, upheld, sustained or repaired, over any creek, or river within this province, navigable for any sloop, shallop, flat, or other craft, that shall or may (in) any wise stop or hinder the navigation of any such sloop, shallop, flat, or other craft, or floats



of logs; any law, custom or usage, to the contrary thereof in any wise notwithstanding.

Sec. 2, Act of August 14, 1725, 1 Sm. Laws, page 168.

The word (in) has been inserted in this section. It does not appear in Smith's Laws.

245. Provided always, That nothing herein contained shall be construed to forbid or hinder the maintaining and repairing the drawbridge herein before particularly mentioned, or any other bridge erected by public authority, or the making of dams, mounds or tide banks, for the draining of low grounds, and improving of meadows, by the owners or owner of the greater part of the lands, low grounds, or meadows, included within the same dams, mounds or tide banks, anything herein contained to the contrary in any wise notwithstanding.

Sec. 3, Act of August 4, 1725, 1 Sm. Laws, page 168.

246. The supervisors aforesaid, shall, within their respective townships, put up and maintain in a conspicuous place, at or near each end of all bridges erected at the expense of the public having an arch of the length or span of forty-five feet or upwards, a notice in large and legible characters, of the fines and penalties hereinafter provided, for the protection of such bridges, under the penalty of a sum not exceeding twenty dollars.

Sec. 63, Act of June 13, 1836, P. L. 551.

This section seems to comprehend first class townships under Section 47, *supra*.

247. Provided that if any such bridge be built across the line of townships, the supervisors of the said townships, shall be liable as aforesaid, to put up and maintain such notices only at or near the end of the bridge within their respective townships.

Sec. 64, Act of June 13, 1836, P. L. 551.

This section seems to comprehend first class townships under Section 47, *supra*.

248. If any person shall wilfully ride, drive or lead or cause another person to ride, drive or lead any horse or other beast of burden, faster than a walk, when crossing any wooden bridge, having an arch of the length or span of forty-five feet or upwards, such person shall, for every such offence, forfeit and pay a sum not less than five dollars, nor more than thirty dollars. Provided nevertheless, That notice of the provisions of this section be set up in the manner hereinbefore required.

Sec. 70, Act of June 13, 1836, P. L. 551.

This section seems to comprehend first class townships under Section 47, *supra*.

249. If any person shall wilfully drive, or cause to be driven, any horned cattle, faster than a walk, when crossing any such bridge, such person shall, for every such offence, forfeit and pay a sum not less than five dollars, nor more than thirty dollars. Provided, nevertheless, That notice hereof be set up in the manner hereinbefore required.

Sec. 71, Act of June 13, 1836, P. L. 551.

This section seems to comprehend first class townships under Section 47, *supra*.

250. If any person shall carry fire over such bridge, except in a lantern, or in some vessel in which it will be fully secured, such person shall forfeit and pay the sum of five dollars: Provided, nevertheless, That notice of the provisions of this section be set up in the manner hereinbefore required.

Sec. 72, Act of June 13, 1836, P. L. 551.

This section seems to comprehend first class townships under Section 47, *supra*.

251. All fines and pecuniary penalties which may be incurred under any of the provisions of this act, shall, unless it be otherwise especially provided, be recoverable in the name of the Commonwealth, at the instance of any person who will sue therefor, in the same manner as debts of like amount are recoverable, with costs of suit and one moiety thereof shall be paid to the person for and recovering the same, and the residue shall be paid into the treasury of the respective townships, for the use of the supervisors of the public roads.

Sec. 75, Act of June 13, 1836, P. L. 551.

The action authorized by this section is not a civil action within the meaning of Sections 22 and 24 of the Act of March 20, 1810, P. L. 208, providing in effect that the action of the court of common pleas on a writ of certiorari to a justice of the peace in civil actions, is final.

*Comm v. Betts*, 76 Pa. 465.

252. The sixty-third, seventieth, and the seventy-first, the seventy-second and the seventy-fifth sections of an act, entitled "An act relative to roads, highways, and bridges," approved the thirteenth day of June, Anno Domini one thousand eight hundred and thirty-six, be and the same are hereby extended to iron bridges, of the same dimensions, throughout this Commonwealth.

Sec. 1, Act of March 18, 1864, P. L. 68.

The sections referred to appear respectively in Sections 246, 248, 249, 250, 251, *supra*.

THE FOLLOWING NAMED SECTIONS ALSO CONTAIN LEGISLATION APPLYING TO BRIDGES, TO WIT: SECTIONS 109, 110, 111, 112, 114, 118, 123, 124, 125, 161, 176, 185, 254, 255.

(d) Bureau of Township Highways.

253. Within sixty days after the approval of this act, the State Highway Commissioner shall establish in the State Highway Department a Bureau of Township Highways, which shall be in general charge of one of the Deputy State Highway Commissioners to be designated by the State Highway Commissioner.

The State Highway Commissioner shall, subject to the approval of the Governor, appoint any additional clerks, officers, and employes that may be required to carry out the provisions of this act; fix the rate of their salary, which shall not exceed that paid other employes of the department for similar service, and the amount of the bond, if any, they shall be required to give.

The salaries and expenses of all such employes shall be paid by the State Treasurer, upon warrants of the Auditor General, out of the moneys appropriated therefor, in the same manner as the salaries and expenses of other officers and employes of the State Highway Department are paid.

The State Highway Commissioner may, from time to time, assign such clerks, officers, and employes of the State Highway Department to the work of the bureau as he may deem necessary.

Sec. 1, Act of July 22, 1913, P. L. 915.

254. The Deputy, or other officer in charge of the Bureau of Township Highways, under the direction of the State Highway Commissioner shall:—

First. Have general supervision of all township highways and bridges which are constructed, improved or maintained, in whole or in part, by the aid of State moneys, excepting State and State-aid highways otherwise provided for.

Second. Prescribe rules and regulations, not inconsistent with law, fixing the duties of township officers in respect to all highways and bridges under his jurisdiction. Such rules and regulations shall, before taking effect, be printed and transmitted to the highway officers affected thereby.

Third. Compel compliance with laws, rules and regulations relating to such highways and bridges by highway officers, and see that the same are carried into full force and effect.

Fourth. Compile statistics relating to such public highways throughout the State, and collect traffic census, data, and such other information in regard thereto as he shall deem expedient.

Fifth. Prepare tables showing total number of miles of highways in the State, by township and county, and file a copy of the same in the office of the State Highway Commissioner.

Sixth. Make an annual report to the State Highway Commissioner, for publication, covering the work of his bureau, the condition and needs of the township roads of the Commonwealth, and containing such recommendations as he shall deem necessary for their further improvement. Said report shall also contain a complete list of the employes in his department and the compensation paid to each, which shall be published as part of the State Highway Commissioner's report.

Seventh. Call such State, county, or township road meetings or conventions, at such times and at such places, as he shall deem wise, and direct officers and employes of his department to attend.

Eighth. Perform such other duties, and have such other powers, as may be conferred by law or imposed by the State Highway Commissioner.

Sec. 2, Act of July 22, 1913, P. L. 915.

255. The State Highway Commissioner shall divide the State into suitable districts, and assign to each district a Superintendent of Highways, provision for whom has already been made by existing laws. Each such superintendent in addition to his other duties, and subject to the rules and regulations of the State Highway Commissioner, and for the purpose of ascertaining what townships shall be entitled to participate in moneys appropriated by the Commonwealth to assist the carrying out the provisions of this act, shall—

First. Have the general charge of all townships highways and bridges within his district or county; see that the same are improved, repaired, and maintained as provided by law, and according to the rules and regulations of the State Highway Commissioner; and have the general supervision of the work of constructing, improving, and repairing township bridges and highways in his district or county, so far as it is practical to do so.

Second. Visit and inspect highways and bridges in each township of his district or county at least once in each year, or whenever directed by the State Highway Commissioner, and advise and direct how to repair, maintain, and improve such highways and bridges.

Third. Examine the various formations and deposits of gravel and stone in his district or county, for the purpose of ascertaining the materials which are best available and suitable for the improvement of highways therein, and, when requested by the State Highway Commissioner, submit samples of such formations and deposits and make a written report in respect thereto.



Fourth. Approve plans and specifications and estimates for the erection and repair of township bridges and culverts, and the construction and maintenance of township highways. Except in case of emergency, he shall not approve of plans or specifications for the construction or repair of any township bridge or culvert, to be constructed of concrete, stone or iron, unless such plans and specifications are in accordance with standards which the State Highway Commissioner is hereby directed to prepare, or have been submitted to and approved by the State Highway Commissioner, through the superintendent in charge of such county or district; and no contract for the repair or construction of any township bridge or culvert shall be valid unless such contract is in accordance with standard plans prescribed, or unless the plans, specifications and estimates have been prepared or approved by the State Highway Commissioner.

Fifth. Report to the State Highway Commissioner annually, on or before December first in each year, in relation to the township highways and bridges in his district or county—containing such matter and in such form as may be prescribed by the State Highway Commissioner. Additional reports shall be made, from time to time, when required by the State Highway Commissioner, in respect to such matters as may be specified by him.

Sixth. Attend any meeting or convention when directed to do so by the State Highway Commissioner. Whenever a public meeting for a county or district shall have been called by the State Highway Commissioner, he shall cause due notice to be mailed to each township supervisor or commissioner, and such others as shall be directed by the State Highway Commissioner.

Sec. 3, Act of July 22, 1913, P. L. 915.

The Superintendents of highways referred to are appointed by the State Highway Commissioner under the Act of May 28, 1915, P. L. 583, amending Section Two of the Act of May 31, 1911, P. L. 468.

(e) Associations of Township Supervisors and Commissioners.

256. The formation of county associations of township supervisors, commissioners, and other persons officially charged with the construction and maintenance of the public roads or streets, is hereby authorized; such associations to hold annual or semi-annual conventions at the county-seats of the respective counties, or some other suitable place within the county, for the purpose of considering and discussing questions and subjects pertaining to the best methods for the construction, improvement, and maintenance of the public highways and bridges.

Sec. 1, Act of May 8, 1913, P. L. 159.

257. It shall be the duty of supervisors of townships of the second class, and commissioners of townships of the first class, in each county

in this Commonwealth, to attend such conventions whenever possible; and each township supervisor or commissioner attending such convention shall receive a certificate, attesting his presence at said convention, signed by the presiding officer and acting secretary of the convention, which certificate shall entitle him to collect from the treasurer of the board of supervisors or commissioners of their respective townships, for their necessary expenses, the sum of two dollars per day for each day's attendance and mileage at the rate of three cents per mile traveled, to be computed by the route usually traveled from his place of residence to the place where the convention is held: Provided, however, That no township supervisor or commissioner shall be paid for more than two days attendance in any one year.

Sec. 2, Act of May 8, 1913, P. L. 159.

258. The officers of the association shall consist of a president, two vice-presidents, a secretary, and a treasurer, all of whom except the secretary shall be members of the association, and shall hold office for one year, or until their successors are chosen. If desirable, the secretary may be a person not a regular member of the association, and may receive for his services such compensation, not to exceed ten dollars per annum, as the other officers may determine. Every township supervisor and commissioner attending such convention shall have the right to vote in the election of said officers. The mayor of any city, the burgess of any borough, or their duly appointed representative, the county commissioners, and the judges of the court in the county, the assistant engineer and the superintendent of highways of the State Highway Department in charge of such county, shall be eligible to membership and to hold office, but shall not be entitled to a vote.

Sec. 3, Act of May 8, 1913, P. L. 159.

259. The county treasurer shall pay to the treasurer of such association, from the county funds, the necessary expenses incurred for the holding of such annual or semi-annual convention, including the necessary expenses of the secretary. The total sum thus paid by the treasurer of any county shall not exceed one hundred and twenty-five dollars a year: Provided, That no payment shall be made to the treasurer of such association until he shall first have presented to the county treasurer an itemized statement of such expenses, verified by affidavit. Within thirty days after every such convention the treasurer of such association shall file with the county treasurer an itemized statement, under oath, showing when and where such convention was held, the number of township supervisors and commissioners present, and all the expenses connected with such convention, together with proper vouchers for all such expenses.

Sec. 4, Act of May 8, 1913, P. L. 159.

260. It shall be the duty of the State Highway Commissioner or his representative, so far as their other duties permit, to assist in the formation of the aforesaid associations, and to be present or represented at their conventions.

Sec. 5, Act of May 8, 1913, P. L. 159.

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## VII.

### SIDEWALKS.

#### (a) Provisions Relating to Both First and Second Class Townships.

261. The supervisors of any township in this Commonwealth be and they are hereby authorized, upon the request of any land owner whose land fronts upon a public highway within such township, to establish a proper width and location for a sidewalk along each side of said highway along the lands of said owner, which width of walk on each side of said highway shall not be less than six feet for roads fifty feet in width or less, and for roads in excess of fifty feet in width shall be ten feet in width, and that when said sidewalks are so established it shall be the duty of such land owner to pay for and keep the same in repair.

Sec. 4, Act of June 26, 1895, P. L. 324.

It seems that Sec. 3, Act of April 28, 1899, P. L. 104, *supra*. Sec. 47 extends this act to townships of the first class. See also the Act of May 7, 1889, P. L. 110, authorizing owners of lands along public highways to lay out and build one sidewalk along the public highway.

262. In all cases where sidewalks have been constructed in unincorporated towns and villages, or upon any public road, it shall not be lawful for any person to ride, lead or drive any beasts of burden thereon; and if any person shall wilfully ride, lead or drive, or cause to be driven, any beast of burden thereon, such person shall for every such offence, forfeit and pay a sum of not less than five, nor more than ten dollars, to be sued for and recovered as fines and pecuniary penalties are recovered under the provisions of the seventy-fifth section of the act of June thirteen, one thousand eight hundred and thirty-six, (P. L. 551), entitled "An act relating to roads, highways and bridges." Provided, That this act shall not apply to any person leading, riding or driving any beast of burden over or on any sidewalk constructed upon or abutting on his own property.

Sec. 1, Act of April 6, 1868, P. L. 67.

For the seventy-fifth section of the Act of June 13, 1836, P. L. 551, see *supra* section 251.



(b) Provisions Relating Exclusively to First Class Townships.

(1) Grading, Paving and Curbing Sidewalks Upon Petition of Owners of a Majority of the Frontage in Lineal Feet.

263. All the corporate power, authority and franchise of the township shall be vested in and exercised by the board of township commissioners; and the said board shall have particularly the following powers:

On application of the owners of a majority of the lineal feet frontage along any highway, or portion thereof, in any village within said township, to cause the sidewalks along said highway to be paved and curbed at the expense of the abutting property.

Part of Section 7, Act of April 28, 1899, P. L. 104.

264. Whenever the owners of property fronting on either side of a public highway in any village in such township shall, by petition, request that a sidewalk with or without curbing, be constructed along that side of said highway between certain points, at the expense of the property owners, and it shall appear that the said petitioners include the owners of a majority of the frontage in lineal feet on that side of the highway where the sidewalk is desired, it shall be lawful for the said board of township commissioners, by ordinance duly adopted, to require the owners of property abutting on that side of said highway where the sidewalk is desired between designated points, to grade and pave the sidewalk in front of their respective property in such manner as may in such ordinance (be) prescribed, and also to curb the same if deemed necessary. And if said owners shall fail to cause such paving and curbing to be done, conformably to the requirements of such ordinance, within sixty days from notice thereof, it shall be lawful for the said board of township commissioners to cause the same to be done, and to collect the cost thereof from the abutting property owners, respectively, in proportion to their frontage. And if the same shall not be paid, to file lien(s) therefor, in the nature of municipal liens against the abutting properties, in the court of common pleas of the county, and to include therein a penalty of twenty per centum on the amount of the cost of the work.

Sec. 12, Act of April 28, 1899, P. L. 104.

"Such townships" are townships of the first class.

The word (be) has been inserted in this section. It does not appear in the pamphlet laws.

265. Whenever heretofore any township of the first class of the State has (pursuant to petition of the majority of property owners in interest and number abutting upon the line of the improvement,) authorized, by any act, ordinance, resolution or contract passed or made, the grading, paving, curbing of and the laying of sidewalks,



upon, any street, lane, or alley, or part thereof; and, in pursuance of such act, ordinance resolution, or contract, work or labor has been done or is being done, or material furnished or is being furnished, or private property has been or is being taken, injured, or destroyed, and properties in the neighborhood of such improvement have been or will be when completed, peculiarly benefited by the same; now by this act said improvements are made valid and binding, and any township of the first class of the state is hereby authorized to ascertain, levy, and collect such costs, damages, and expenses in the manner following:

Said township of the first class, or any person or persons interested, may, at any time after such work or labor has been done, or material furnished, or damage done, present its, her, his, or their petition in any court of common pleas of the proper county, or to any law judge thereof in vacation; and the court shall appoint three discreet and disinterested persons as viewers, and appoint a time, not less than twenty nor more than thirty days thereafter, when said viewers shall meet upon the line of the improvement and view the same and the premises affected thereby. The said viewers shall give at least ten days' notice of the time of their first meeting, by publication in one or more newspapers of the township of the first class, or of the county in which it is situated, and by handbills posted upon the premises, or otherwise, as the said court shall direct, having regard to the circumstances of the case.

Sec. 1, Act of June 9, 1911, P. L. 733.

266. The said viewers, having been duly sworn or affirmed faithfully, justly, and impartially to decide and a true report to make concerning all matters and things to be submitted to them, or in relation to which they are authorized to inquire in pursuance of the provisions of this act, and having viewed the premises and examined the property, shall hear all parties interested and their witnesses; and shall estimate and determine the value of property taken, injured, or destroyed, to whom the same is payable; and having so estimated and determined the damages, together with the benefits, as hereinbefore mentioned, they shall prepare a schedule thereof, and give notice to all parties to whom damages are allowed or upon whom assessments for benefits are made of a time, not less than ten days thereafter, and of a place, where said viewers shall meet and exhibit said schedule, and hear all exceptions thereto and evidence thereon. Notice of the time and place of said meeting shall be given in the manner provided by law for the service of a summons in a personal action, upon all parties allowed damages or assessed benefits, as shown by said schedule, if the parties can be found in the municipality; or upon an adult person residing upon the property affected by the assessment,

in case the owner or reputed owner cannot be found; and to all other persons, by publication in the newspaper in which the first notice of said view was published. When no service is made upon the owner, reputed owner, or upon an adult person residing upon the property affected, said notice, where publication thereof has also been made, shall be deemed to have been properly served if tacked or conspicuously posted upon the premises. After making whatever changes are deemed necessary, the said viewers shall make report to the court, showing the damages and benefits allowed and assessed in each case, and file therewith a plan showing the improvement, the properties taken, injured, or destroyed thereby, and the properties thereby benefited. When said report is filed notice shall be given by publication once in the newspaper or newspapers publishing the notice provided for in section one of this act. Said notice shall state the date of the filing of the report, and shall contain a schedule of the damages and benefits as shown therein, and shall further state that, unless exception thereto be filed within thirty days from the date of filing, the said report will be confirmed absolutely.

Sec. 2, Act of June 9, 1911, P. L. 733.

267. The payment of damages sustained by the making of the improvements aforesaid may be made, either in whole or in part, by said township of the first class; or, in whole or in part, by assessments upon the property benefited by such improvement, as said viewers may determine and the court approve; and, in the latter case, the viewers appointed, having first estimated and determined the damages apart from benefits, shall also assess said damages, or so much thereof as they may deem just and reasonable, upon the properties peculiarly benefited by the improvements, including in the said assessment all property for which damages have been allowed, if in their judgment such properties will be benefited thereby, and shall report the same to said court. The total assessment for benefits shall not exceed the total damages awarded and agreed upon.

Sec. 3, Act of June 9, 1911, P. L. 733.

268. The viewers provided for in the foregoing section may be appointed at any time within one year from the date of the passage of this act. The costs of the viewers and all court costs incurred in the proceedings aforesaid shall be defrayed by said township of the first class, and each of said viewers shall be entitled to a sum not exceeding five dollars per day for every day necessarily employed in the performance of the duties herein prescribed.

Sec. 4, Act of June 9, 1911, P. L. 733.

269. Upon the report of said viewers, or any two of them, being filed in said court, any party interested may, within thirty days there-

after, file exceptions to the same; and the court shall have power to confirm said report, or to modify, change, or otherwise correct the same, or change the said assessment made therein, or refer the same back to the same or new viewers, with like power as to their report. When said report is first filed in court, the prothonotary thereof shall mark the same confirmed nisi; and, in case no exceptions are filed thereto within thirty days, he shall enter a decree (as of course) that the said report be confirmed absolutely. Within thirty days after the confirmation, modification, changing, or correction of any report, any interested party may appeal from the said decree to the Superior Court or to the Supreme Court, as the case may be. The said report when and as finally confirmed shall be conclusive as to any assessments made therein to pay the costs, damages, and expenses of said improvement. Within thirty days after said report is filed in court, as aforesaid, any party whose property is taken, injured, or destroyed, or who is assessed benefits to pay damages for property taken, injured, or destroyed, may appeal to the court of common pleas, and demand a trial by jury according to the course of the common law. Upon the trial of any such appeal in court, the report of viewers, as finally approved, confirmed, modified, or changed by the court, shall be prima facie evidence of the benefits as therein mentioned; and in case the party appellant does not obtain a verdict more favorable than was the report of viewers, as finally confirmed, modified, or changed, the said appellant shall not recover any costs on the appeal. No appeal under this act shall prevent the filing of liens by any township of the first class for any assessment made by said report; but, upon the final determination of the issue, the court shall make such order as to lien or liens filed as shall appear right and proper.

Sec. 5, Act of June 9, 1911, P. L. 733.

(2) Grading, Curbing and Paving Sidewalks and Footwalks Within any Town or Village.

270. The board of township commissioners, in every township of the first class, shall have power to require and direct the grading, curbing and paving of the sidewalks and footwalks alongside of public highways within any town or village, by the owner or owners of the lots respectively fronting thereon, in accordance with such general regulations as may be by ordinance of said board prescribed.

Sec. 1, Act of April 23, 1903, P. L. 265.

271. The said boards of township commissioners shall also have power to survey, lay out, enact and ordain foot-walks, pavements, board-walks, culverts, and drains, over and upon the land abutting on and alongside of all turnpike roads where the same pass through any town or village, and to fix the size and width thereof, and to require



the paving, curbing, et cetera, thereof, by the owners of the land fronting thereon, in accordance with general regulations to be prescribed by ordinance of said board. Damages and benefits to property caused by any such action, shall be assessed and paid for as provided by existing laws relating to the widening of roads and streets by township commissioners.

Sec. 2, Act of April 23, 1903, P. L. 265.

For procedure to assess damages for widening roads and streets see Act of June 7, 1901, P. L. 510, *supra* sections 144 to 149 inclusive. For other provisions relating to sidewalks alongside turnpike roads see sections 281 to 284 *infra*.

272. On failure of any owner of land to do and perform any work required under the provisions of this act, within the time prescribed by the township ordinance, it shall be lawful for the township commissioners to cause the same to be done, and to collect from the said owners the cost of the work and material, together with a penalty of ten per centum thereon to cover the expense of collection, and to file a municipal claim therefor against the abutting property, in the manner prescribed by law.

Sec. 3, Act of April 23, 1903, P. L. 265.

(3) Sidewalks along the Sides of any Principal Street or Highway Leading to or Connecting Cities, Boroughs, Villages or Places of Public Resort.

273. It shall be lawful for the board of township commissioners of any township of the first class in this Commonwealth, and they are hereby authorized and empowered, from time to time, whenever they may deem it advisable so to do, to ordain and establish sidewalks along either one or both sides of any principal street or highway of the said township, leading directly to or connecting cities, boroughs, villages, or places of public resort, within the lines of the said street or highway, for such distance as the said board of township commissioners may deem proper: Provided, however, That in case the said street or highway be a turnpike, or other road, managed and controlled by a corporation duly incorporated under the laws of this Commonwealth, the written consent of the said corporation shall first be obtained thereto.

Sec. 1, Act of June 25, 1913, P. L. 561.

274. The said board of township commissioners is hereby authorized and empowered to charge to the owner or owners of the properties abutting on the said sidewalk, according to the respective frontage of each abutting property, such part or portion of the expense of the construction of such sidewalk, including the grading, and



curbing incident thereto, as the said board of township commissioners shall deem reasonable and just, not to exceed, however, in any case fifty per centum of the total cost of the construction of the said sidewalk, including the grading and curbing incident thereto, and to defray the remainder of the expense of the construction of the said sidewalk, including the grading and curbing thereto, from the public funds of the said township.

Sec. 2, Act of June 25, 1913, P. L. 561.

275. The ordinance establishing any such sidewalk shall specify the width thereof, which, however, shall not be a less than five (5) feet in any case, and shall in no case leave a roadway of less than twenty (20) feet in the clear, and shall require such grading and filling as shall be deemed necessary. The kind and character of the pavement shall be specified in the ordinance, and the manner of laying the same may be specified in like manner or provided for by some general ordinance, or by the regulation of a committee of the board: Provided, That it may be lawful for the said township commissioners to provide for the construction of a boardwalk in any case, instead of a paved sidewalk.

Sec. 3, Act of June 25, 1913, P. L. 561.

276. In all cases coming under this act, if, at the time of the passage of the ordinance, a sidewalk, paved with brick, stone, or concrete of any sort, has already been constructed by a property owner in front of his property, the township commissioners may accept such walk as a compliance with the ordinance, although it be not constructed according to the specifications thereof. Otherwise, if such sidewalk be not accepted, the township shall bear the expense of reconstructing the same.

Sec. 4, Act of June 25, 1913, P. L. 561.

277. All ordinances for the construction of sidewalks, under the provisions of this act, shall provide for written notice to be given to the property owners to grade and construct such sidewalk in front of their respective properties within a certain specified period, not less than three (3) months from date of the service of such notice: Provided, however, That when such notice is given on or after the first day of September in any year, the property owners affected shall not be considered in default for failure to construct the said sidewalk until the first day of June of the following year. Service of such notice shall be made by handing the same to the property owner, or by leaving the same at his place of residence, if he have one in the county; or, if he do not reside in the county, by mailing the same to his address, if his address can be obtained; and also, in all cases, a copy of such notice shall be served upon the occupant of the house

or any other building on the premises. Should any property owner fail to comply with the requirements of the ordinance, within the time or times specified in this section, it shall be lawful for the board of township commissioners to cause the sidewalk in front of his property to be constructed in accordance with the requirements of the ordinance, and to collect the proportion of the expense thereof, which, under the ordinance authorizing the construction of the same is chargeable upon the property owner, including the costs of grading and any other incidental matters, together with the penalty of ten per centum, by action of assumpsit, or by filing a lien against said property, in the nature of a municipal lien, in the manner prescribed by existing laws.

Sec. 5, Act of June 25, 1913, P. L. 561.

278. When any sidewalk has been constructed by an abutting property owner in front of his property, under the provisions of this act, the township commissioners, upon the presentation to them of a receipted bill for the cost of constructing such sidewalk, shall forthwith pay to the property owner the part or portion of the expense of the construction of the said sidewalk, which, by the terms of the ordinance authorizing the construction of the same, is to be defrayed from the public funds of the said township; and if the said part or portion of the expense of the construction of the said sidewalk, which is to be defrayed from the township funds, is not paid forthwith to the property owner by the board of township commissioners, the property owner shall be exonerated from the payment of any and all township taxes until he has been fully reimbursed by the taxes so exonerated for the part or portion of the expense of constructing the said sidewalk, which should have been paid him by the township commissioners, with interest thereon from the date of his payment thereof.

Sec. 6, Act of June 25, 1913, P. L. 561.

279. The powers with regard to the establishing and construction of sidewalks, and the expense thereof, conferred upon the township commissioners of townships of the first class by the provisions of this act, shall extend to and be deemed to include the grading and curbing incident to such sidewalks.

Sec. 7, Act of June 25, 1913, P. L. 561.

280. This act shall not be construed to repeal or in anywise alter or affect any existing act of Assembly authorizing or regulating the construction of sidewalks along any public road, street, or highway, or part or portion thereof, within townships of the first class in this Commonwealth.

Sec. 8, Act of June 25, 1913, P. L. 561.

#### (4) Sidewalks Along Turnpike Roads.

281. In all cases where a turnpike road, managed and controlled by a private corporation, runs through any town or village in any township of the first class, it shall be lawful for the board of township commissioners, having first obtained the written consent of the turnpike company or other corporation having control of such road, to ordain and establish sidewalks along either one or both sides of the turnpike road, within the lines of same, and to charge the cost of construction of such sidewalk to the owner of the abutting properties, according to the frontage of said properties, respectively.

Sec. 1, Act of April 22, 1905, P. L. 283.

For other provisions relating to sidewalks alongside turnpike roads see section 271 *supra*.

282. The ordinances establishing any such sidewalk shall specify the width thereof, and shall require such grading and filling as shall be deemed necessary. The kind and character of the pavement shall be specified in the ordinance, and the manner of laying the same may be specified in like manner, or provided for by some general ordinance, or by the regulation of a committee of the board: Provided, That it may be lawful for the said township commissioners to provide for the construction of a board walk, in any case, instead of a paved sidewalk.

Sec. 2, Act of April 22, 1905, P. L. 283.

283. In all cases coming under this act, if at the time of the passage of the ordinance a sidewalk, paved with brick, stone or concrete, of any sort, has already been constructed by a property owner, in front of his property, the township commissioners may accept such walk as a compliance with the ordinance, although it be not constructed according to the specifications thereof. Otherwise, if such sidewalk be not accepted, the township shall bear the expense of re-constructing the same.

Sec. 3, Act of April 22, 1905, P. L. 283.

284. All ordinances for the construction of sidewalks, under the provision of this act, shall provide for written notice to be given to the property owners to grade and construct such sidewalk, in front of their respective properties, within a certain specified period, not less than thirty days from the date of service of such notice. Service of such notice shall be made by handing the same to (the) property owner, or by leaving the same at his place of residence, if he have one in the county; or, if he do not reside in the county, by mailing the same to his address, if his address can be obtained; and also, in all cases, a copy of such notice shall be served upon the occupant



of the house or any other building on the premises. Should any property owner fail to comply with the requirements of the ordinance, within the time specified in the notice, it shall be lawful for the board of township commissioners to cause the sidewalk in front of his property to be constructed, in accordance with the requirement of the ordinance, and to collect the cost thereof, including the costs of grading and any other incidental matters, together with the penalty of ten per centum, by action of assumpsit, or to file a lien against said property, in the nature of a municipal lien, in the manner prescribed by existing laws.

Sec. 4, Act of April 28, 1905, P. L. 283.

#### (5) Repair of Sidewalks.

285. In townships of the first class, where sidewalks have been established by township ordinance, it shall be the duty of the owner of each abutting property to keep in good order and repair the sidewalk immediately in front of his property, and at all times free and clear of all obstruction to safe and convenient passage.

Sec. 1, Act of June 19, 1911, P. L. 1066.

286. If the owner of any property shall neglect to duly and properly perform the duty required of him in section one, the township commissioners may serve upon him written notice requiring him to do what may be deemed necessary in the premises; and if such property owner shall fail to comply with the requirements of said notice within thirty days from the date of service of the same, the township commissioners may proceed to do the necessary repairs or to remove any obstruction, and the cost of the same, together with a penalty of ten per centum, shall be paid by the delinquent property owner; and may be collected, by action in the name of the township as debts of like amount are by law collected; or the township commissioners may file a municipal lien for the same, in the name of the township, against the property.

Sec. 2, Act of June 19, 1911, P. L. 1066.

287. The notice provided for in section two may be served on the property owner by leaving the same at his place of residence, or, if he have no residence in the township, then by leaving the same with any tenant or occupant of the premises, and mailing a copy thereof to the owner at his last known place of address.

Sec. 2, Act of June 19, 1911, P. L. 1066.

#### (c) Provisions Relating Exclusively to Second Class Townships.

288. The road supervisors in townships of the second class are hereby authorized to construct sidewalks of board, plank, or ce-



ment or other suitable material, along the public highways through towns and villages in such townships, upon the petition of the abutting property owner or owners, and the expense of the construction of such sidewalk shall be paid by the said road supervisors and the abutting property owner or owners, in such proportion as shall be agreed upon between them previously to the construction of such sidewalk: Provided, however, That not to exceed ten per centum of the road taxes raised in such township for the current year shall be used for such purposes.

Sec. 1, Act of June 3, 1911, P. L. 638.

The powers of road supervisors are vested in township supervisors by Sec. 20, Act of July 22, 1913, P. L. 915, *infra* Section 537.

289. Road supervisors of townships of the second class are hereby authorized to regulate, by ordinance, the grade and width of sidewalks constructed along the highways in such townships, and shall have general supervision over the same.

Sec. 2, Act of June 3, 1911, P. L. 638.

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## VIII.

### CROSSINGS OF HIGHWAYS AND RAILROADS.

290. Except as in this act elsewhere provided, all crossings, hereafter established, whether of highways by railroads or of railroads by highways, shall, except in cities of the first and second classes, be above or below the grade thereof.

Sec. 1, Act of June 7, 1901, P. L. 531.

This section applies to lateral railroads. *Clifton Heights Boro, v. Kent Manufacturing Co.*, 220 Pa., 585. This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

The Public Service Commission has exclusive power to determine, order and prescribe, in accordance with plans and specifications to be approved by it, the just and reasonable manner, including the particular point of crossing, in which the tracks or other facilities of any railroad corporation or street railway corporation may be constructed across any public highway, at grade, or above or below grade; or in which any public highway may be constructed across the tracks or other facilities of any railroad corporation or street railway corporation at grade, or above or below grade; Article V, section 12, Act of July 26, 1913, P. L. 1374.

291. Every railroad company constructing a new line of railroad, under its chartered powers, across a highway, except in cities of the first and second classes, shall construct the same above or below the

grade of the highway, unless permitted, in the manner hereinafter provided, to construct the same at grade; and such railroad company may exercise the powers, contained in its charter and the general laws, for altering the grade and location of highways in order to avoid grade crossings.

Sec. 2, Act of June 7, 1901, P. L. 531.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312. See notes to section 290 supra.

292. Every municipality or other authority, hereafter constructing a highway, except in cities of the first and second classes, across an existing railroad, shall construct the same above or below the grade thereof, unless permitted, in the manner hereinafter provided, to construct the same at grade, and the cost of said work shall be paid one-half by said municipality and one-half by the railroad company owning said railroad.

Sec. 3, Act of June 7, 1901, P. L. 531.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312. See notes to section 290 supra.

293. Any railroad company may, at any time, at its own cost and of its own motion, vacate and alter any crossing of its tracks at grade by a highway, except in cities of the first and second classes, by passing the highway over or under its railroad, and for this purpose may use the powers contained in its charter and the general laws for altering the location and grade of the highway: Provided, That no highway which has been constructed at grade, by permission of the court of common pleas; shall be so altered without like permission, unless by agreement with the municipality wherein the crossing is situated.

Sec. 5, Act of June 7, 1901, P. L. 531.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

The Public Service Commission has exclusive power, upon its own motion or upon complaint, and after hearing, to order any crossing now existing or hereafter constructed at grade, or at the same or different levels, to be relocated or altered, or to be abolished, according to plans and specifications to be approved, and upon just and reasonable terms and conditions to be prescribed, by the Commission: Article V, section 12, Act of July 26, 1913, P. L. 1374.

294. Any municipality, except cities of the first and second classes, may of its own motion, at any time, at its own cost, vacate and alter any railroad grade crossing of a highway, within its limits, by passing the highway over or under the grade of the railroad: Provided, That no highway which has been constructed at grade, by permission of the court of common pleas, shall be so altered without

like permission, unless by agreement with the railroad company: And Provided, further, That such alteration shall not, without the consent of the railroad company, create a steeper gradient than the established gradient, in the same direction, upon the division of said railroad upon which the crossing is located. The said municipality shall, before proceeding with the work, give thirty days' notice to the railroad company of the proposed vacation, alteration and change, with plans and details thereof; and it shall be the duty of the railroad company, in case the highway is to be carried under the railroad, to protect and support the railroad tracks during the progress of the work, and in case of the failure of the railroad company so to do, the municipality may proceed to enter upon the railroad and provide for such protection and support.

Sec. 6, Act of June 7, 1901, P. L. 531.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

For jurisdiction of Public Service Commission in the abolition of grade crossings, see section 12, Article V, of the Act of July 26, 1913, P. L. 1374. See note to section 290 *supra*.

295. If any additional lands or rights or easements therein are necessary or required for the use of the railroad company, in making the changes hereinbefore authorized, the same may be purchased or condemned by the company owning or operating said railroad, and for that purpose the company owning or operating the railroad is hereby invested with all the powers of condemnation contained in the charters of said companies or either of them, or in the laws under which said companies or either of them is organized; such lands taken by the railroad company shall be paid for by the company acquiring them. If any additional lands or rights or easements therein are necessary or required for the changes of highways, or the locations of new highways or passageways, such lands may be taken by the municipality by purchase or condemnation, and the cost of the same shall be deemed a part of the cost of the changes and alterations, and paid for in like manner as the other expenses thereof. The railroad companies interested in the proposed improvement shall have notice of any such condemnation proceedings, and the right to be heard therein, and no such purchase shall be made without the approval of the railroad company.

Sec. 7, Act of June 7, 1901, P. L. 531.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

"The compensation for damages which the owners of adjacent property, taken, injured or destroyed may sustain in the construction, relocation, alteration or abolition of any such crossing \* \* \* (for which compensation the said owners are hereby invested with warrant of au-



thority, upon appeal from the determination of the Commission, to sue the Commonwealth), shall, after due notice and hearing, be ascertained and determined by the Commission; and such compensation, as well as the expense of the said construction, relocation, alteration, or abolition of any such crossing, shall be borne and paid, as hereinafter provided, by the public service company or companies or municipal corporations concerned, or by the Commonwealth, either severally or in such proper proportions as the Commission may, after due notice and hearing, in due course, determine, unless the said proportions are mutually agreed upon and paid by those interested aforesaid:" Article V, section 12, Act of July 26, 1913, P. L. 1374. (Public Service Company Law).

296. Whereas, The vacation of grade crossing over railroads, and substitution of undergrade or overgrade crossings, will prevent destruction of life and property, and is demanded by public policy; but, owing to the laws of the State relating to opening and vacating of public highways, is attended with delays, and is often impracticable; therefore:

Wherever any railroad is or shall be crossed at grade by a public road, street, or highway, and the railroad company shall have constructed or shall construct, or there shall have been or shall be constructed by others, with such company's consent, an undergrade subway or an overgrade bridge or crossing, sufficiently near said public crossing to reasonably accommodate the traveling public, the court of quarter sessions of the county in which the said crossing exists, upon petition of said railroad company or other persons, may, if satisfied that said undergrade subway or overgrade bridge or crossing reasonably accommodates the traveling public, after notice to any corporation using or occupying or authorized to use or occupy the street, proposed to be vacated, with tracks, wires, pipes or conduits, and, by rule to show cause, to the supervisors if the said crossing is in a township, (or to the burgess or mayor if said crossing is in a borough or city,) and after testimony, taken either in open court or by deposition, as the court may direct, order that said road, street, or highway where it crosses said railroad at grade, and its approaches on both sides, shall be vacated, and that the said undergrade crossing or subway or the overgrade bridge or crossing and its approaches on both sides, substituted therefor, shall be a public highway, and be maintained by the proper authorities; and any company which had rights in or upon the street so vacated shall have, and be permitted to exercise, the same rights upon said streets, highways, bridges, and subways so opened, and to connect the same with its system without obtaining further authority or consent.

Sec. 1, Act of April 22, 1905, P. L. 295.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

For the jurisdiction of the Public Service Commission in the abolition of grade crossings see section 12, Article V, of the Act of July 26, 1913, P. L. 1374, quoted in the note to section 290 supra.



## IX.

### CONTRACTS WITH RAILROADS AND RAILWAYS.

297. The proper authorities of any (county, city, town or) township of this state, respectively, be and they are hereby authorized and empowered to enter into contracts with any of the railroad companies, whose roads enter their limits, respectively, whereby the said railroad companies may re-locate, change or elevate their railroads within said limits or either of them, in such manner as in the judgment of such authorities, respectively, may be best adapted to secure the safety of lives and property, and promote the interest of said (county, city, town or) township; and for that purpose the said authorities shall have power to do all such acts as may be necessary and proper, to effectually carry out such contracts; and any such contracts made by any railroad company or companies as aforesaid with said authorities or either of them, are hereby fully ratified and confirmed: (Provided, That nothing in this proviso contained shall affect any contract made, or hereafter to be made, with any railroad company, from apportioning the expenses of altering and adjusting the grades of existing railroads and intersecting streets in any city or borough, so as to dispense with grade crossings.)

Sec. 1, Act of June 9, 1874, P. L. 282.

See the "Public Service Company Law" of July 26, 1913, P. L. 1374, giving the Public Service Commission jurisdiction to inquire into and regulate the safety, adequacy and sufficiency of the facilities, plants and equipment of public service companies, and the construction and abolition of grade crossings.

298. It shall and may be lawful for any (city, borough or) township, of the one part, and any street passenger railway company, surface, elevated or underground, or motor power company leasing and operating the franchises and property of such company within the limits of such (cities, boroughs or) townships, of the other part, to enter into contracts with each other affecting, fixing, and regulating the franchises, powers, duties, and liabilities of such companies, and the regulations and respective rights of the contracting parties. Such contracts may, inter alia, provide for payments by the companies to the local authorities, in lieu of the performance of certain duties or the payment of license fees or charges imposed in favor of such (city, borough or) township by the charters of the respective companies or by any general law or ordinance, for the appointment by the local authorities of a certain number of persons to act as directors of such company, in conjunction with the directors elected by the stockholders of such company, and, further, may provide for

the ultimate acquisition by the local authorities, upon terms mutually satisfactory, of the leaseholds, property and franchises of the contracting companies.

Sec. 1, Act of April 15, 1907, P. L. 80.

This act was held constitutional in *Brode v. Philadelphia*, 230 Pa., 434. It was repealed so far as it confers any powers or imposes any duties on boroughs by the Act of May 14, 1915, P. L. 312.

299. In case the local authorities of any (city, borough, or) township shall deem it necessary for the public benefit and convenience to secure the removal of any street railway tracks already laid, or prevent the laying of such tracks already authorized to be laid, or to change the route of any street railway on any street or streets, or portion of a street or streets, within its corporate limits, and such purpose or purposes can be accomplished by agreement with the street passenger railway company, or motor power company owning, leasing or operating such tracks, it shall and may be lawful for the said parties to enter into a contract, for a period not exceeding fifty years, for such considerations and upon such terms and conditions, and containing such stipulations, reservations and covenants as may be agreed upon between the respective parties thereto; and such contract may include a covenant providing that, during the continuance thereof, municipal consent shall not be granted to any other company to use or occupy the street, streets, or portions of a street or streets, covered by such contract, for street railway or passenger transportation purposes; which covenant shall be enforceable by bill in equity against such (city, borough, or) township, in case of attempted breach thereof; and such contract may also provide for the laying or relaying of such tracks, upon such terms and under such contingencies and conditions as may be agreed upon. When such contract shall have been made, it shall form a part of the charter of the company, with like force and effect as to all its terms, conditions, stipulations, restrictions, covenants, and provisions as to change of routes as if the same formed a part of the original charter of such company; and no removal of tracks already laid, or postponement of or delay in the time of beginning or completing the work of laying tracks already authorized to be laid, and no change of route therein provided for, shall operate or be construed to deprive or divest any such company, entering into such contract, of any of the rights, franchises or privileges possessed by it at the time of entering into such contract, so as to operate in favor of any company subsequently formed and seeking to occupy, for street railway purposes, the street, streets, or portions of a street streets, covered by such contract: Provided, however, That nothing in this act contained, nor any contract made in pursuance thereof, shall be construed to limit or affect in any way, or impose any additional liability for the exercise of,

the right of a steam railroad company to lay its tracks over, upon, under and across such street or streets, or portions thereof.

Sec. 1, Act of May 3, 1905, P. L. 379.

This act was repealed so far as it confers any powers or imposes any duties on boroughs by the Act of May 14, 1915, P. L. 312.

See the Public Service Company Law of July 26, 1913, P. L. 1374, supra section 290 notes.

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## X.

### SEWERS, SEWAGE DISPOSAL AND DRAINS.

#### (a) Provisions Relating to Both First and Second Class Townships.

##### (1) Power to Join with Municipalities for Sewage Purposes.

300. Whenever in the construction of a sewage system, including trunk-line sewers or drains and a sewage-disposal plant or plants, or either, after plans and specifications have been prepared and submitted to the State Department of Health, and approved in accordance with the act of Assembly of April twenty-second, one thousand nine hundred and five, (P. L. 260), entitled "An act to preserve the purity of the waters of the State, for the protection of the public health," it shall be necessary or advisable for (two or more municipalities, or) a municipality and a township, to use such sewage system in common, then, and in such case, such municipalities and townships may unite in the construction and ownership of such sewage system, and shall jointly maintain the same.

Sec. 1, Act of June 15, 1911, P. L. 966, amending section 1, Act of May 1, 1909, P. L. 306.

This section was repealed so far as it confers any powers or imposes any duties on boroughs by the Act of May 14, 1915, P. L. 312.

For additional powers of first class townships to join with municipalities for sewer purposes, see infra sections 321 and 322.

301. (Two or more municipalities, or) such municipality and township, are hereby authorized to enter into an agreement for the purpose of building sewers as provided in the first section of this act.

Sec. 2, Act of June 15, 1911, P. L. 966, amending section 2, Act of May 1, 1909, P. L. 306.

This act was repealed so far as it confers any powers or imposes any duties on boroughs by the Act of May 14, 1915, P. L. 312.

(2) Damages for Injuries to Lands, Property or a Material.

302. The right to damages against (cities, counties, boroughs, or) townships, within this Commonwealth, is hereby given to all owners or tenants of lands, property, or material (abutting on, or through which pass, roads, streets, lanes, or alleys,) injured by (the laying out, opening, widening, vacating, extending or grading of said roads, streets, lanes or alleys, or the changing of grades or lines thereof, by said cities, counties, boroughs or townships; the construction and the vacating by said cities, counties, boroughs or townships of bridges, and the piers, abutments, approaches, embankments, slopes, or causeways therefor, or leading thereto; and) the construction of sewers by said (cities, counties, boroughs or) townships in, over, upon, along, or through said lands, property, or material.

Sec. 1, Act of May 28, 1913, P. L. 368.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

303. All juries of view appointed, or which shall hereafter be appointed, under existing laws, for assessing damages or benefits for taking, using, occupying or injuring lands, property, or material, are hereby directed, and it shall be their duty, to assess the damages provided for in section one of this act, if any, against said (cities, counties, boroughs, or) townships, as the case may be, and the benefits, if any, in connection therewith, and make report thereof as under existing laws.

Sec. 2, Act of May 28, 1913, P. L. 368.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

304. The right of appeal to the proper court of common pleas from said report, and the right of trial by jury in said court of common pleas, and the right to file exceptions to said report, are hereby given to any party or parties not satisfied with said report, in accordance with proceedings under existing laws.

Sec. 3, Act of May 28, 1913, P. L. 368.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

305. After disposal of exceptions, or verdict and final judgment, any interested party or parties may have an appeal to the Superior Court or Supreme Court, as in any other cases.

Sec. 4, Act of May 28, 1913, P. L. 368.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.



306. The provisions of this act shall apply to all existing and future proceedings.

Sec. 5, Act of May 28, 1913, P. L. 368.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

(b) Provisions Relating Exclusively to First Class Townships.

(1) Sewer Systems, Drainage, Sewage Disposal and  
Assessment of Cost of Construction of  
Sewers and Drains.

307. All the corporate power, authority and franchise of the township shall be vested in and exercised by the Board of Township Commissioners; and the said Board shall have particularly the following powers:

Sec. 7, par. 1, Act of April 28, 1899, P. L. 104.

308. From time to time to establish and construct a system of sewers and drainage, locating the same as far as practicable along and within the lines of such of the public roads of the township as may to the commissioners seem advisable, and to permit, and, where necessary for the public health, to require, adjoining and adjacent property owners to connect with and use the same; all persons, so connecting, paying in addition to the cost of making such connection, such monthly or annual rate as shall be prescribed by ordinance, and which shall constitute until paid a lien against the property so connecting with such system, and the amount thereof may be recovered by due process of law.

Where it shall be reasonably impracticable, in the judgment of the commissioners, in any part of such system to carry such sewers or drains along the lines of public roads, it shall be lawful for the commissioners to locate and construct so much of the same as may be necessary through private lands.

And the commissioners shall make the necessary provision for the disposition of the sewage and drainage within, or for carrying the same beyond, the limits of the township, and to this end they are hereby authorized to enter into contracts with other municipalities and other corporations or persons, and to acquire such land within the township as may be necessary, not exceeding, however, in any one place, one acre, nor exceeding an aggregate of three acres.

In the event of inability to agree with the owners, either for the land necessary for so much of the line of sewers and drains as shall not be located upon public roads or for so much land as shall be required for the disposition of the sewage, it shall be lawful for the commissioners to enter upon said land and mark thereupon the

route and width of land necessary for the construction of the line of sewers or drains, or the boundaries of so much land as may be necessary for disposition of such sewage, and occupy the said land for such purposes; and for all damage done or suffered, or which shall accrue to the owner or owners of such land by reason of the taking of the same for the purposes aforesaid, the funds of the township which may be raised by taxation shall be pledged and deemed as security. And it shall and may be lawful for the Court of Common Pleas of the county, on application thereto by petition either by the commissioners or by the owner or owners of said lands, to appoint a jury of viewers, consisting of three discreet and disinterested citizens of said county, who shall not be the owners of property or residents in the township in which such land is taken, as aforesaid, and appoint a time not less than twenty nor more than thirty days thereafter for said viewers to meet upon said land, of which time and place ten days' notice shall be given by the petitioners to said viewers and the other party; and the said viewers, having been first duly sworn or affirmed faithfully, justly and impartially to decide, and a true report to make concerning, all matters and things to be submitted to them, and having viewed the premises, shall estimate and determine what amount of damages, if any, has been or may be sustained by reason of such occupation, taking and use, and to whom payable, and make report thereof to said court; and if damages be awarded and the report be confirmed by said court, judgment shall be entered thereon, and if the amount thereof be not paid within thirty days after the entry of such judgment, execution to enforce the collection thereof may be issued, as in other cases of judgment against townships; and each viewer shall be entitled to two dollars and fifty cents per day for every day necessarily employed in the performance of his duties herein prescribed, to be paid by such township: Provided, That either party shall have the right of appeal to the said court of common pleas, as provided by law.

In any case where, under the authority of this act, a system of sewage and drainage covering any township, in whole or in part, shall have been approved and duly authorized by ordinance, it shall be lawful for the commissioners to enter into a contract with any responsible individual or individuals or corporation, under the terms of which such system of sewage or drainage shall be constructed at the expense of such individual or individuals or corporation, he, they or it becoming thereby entitled to exercise all the powers of the township in the construction, maintenance and operation thereof, with the right to collect such charges in connection therewith as the commissioners may prescribe, in as full manner as the same might have been collected by the township or the commissioners. In such con-

tract, however, it shall be the duty of the commissioners to reserve to the township the right at any time, or after a prescribed time, to itself take possession of such system of sewage and drainage and its appurtenances, at a price and upon terms to be fixed in the contract.

Sec. 1, Act of May 24, 1901, P. L. 294, amending section 7, clause 3, Act of April 28, 1899, P. L. 104.

These viewers are to be appointed from the board of viewers of the county. See Act of June 23, 1911, P. L. 1123.

309. It shall be lawful for the board of township commissioners of every township of the first class to charge the cost of construction of any sewer or drain, or of any system of sewers or drains, heretofore or hereafter constructed by the authority of the said township, or such portion of the cost thereof as the said board may deem proper, upon the properties accommodated or benefited thereby; that the ordinance providing for such charge shall, in all cases, be adopted by the board within six months from the date of the final completion of such sewer or drain, or of such system of sewers and drains, as the case may be.

Sec. 1, Act of February 23, 1905, P. L. 22.

See *Anderson v. Lower Merion Twp.*, 217 Pa., infra section 311

310. Whenever a sewer system has been heretofore, or shall hereafter be, constructed by a township of the first class, for the accommodation of a certain portion only of the territory of the township, it shall be lawful for the commissioners of such township to constitute the territory accommodated into a sewer district, or to divide it into several sewer districts, at the discretion of the board. In every such case the commissioners shall cause an estimate to be made of the proportion of the cost of the sewer system which should equitably be charged on each of said districts, no district being charged with more than its due proportion of the cost of the main sewers, pumping-stations, et cetera, used jointly by more than one district; and in such case the aggregate amount charged on property in any such district shall not exceed the amount of such estimate. Any amount not charged upon properties benefited, as hereinbefore provided for, shall be chargeable, either upon all property within the sewer district, on a pro rata of the assessed valuation thereof, or else shall be paid out of the general taxation of the township, as the commissioners may decide. And such apportionment shall be declared and established by ordinance of the board of township commissioners.

Sec. 2, Act of February 23, 1905, P. L. 22.

See *Anderson v. Lower Merion Twp.*, 217 Pa., infra section 311



311. The charge for sewer construction in any township of the first class may be assessed upon the properties accommodated and benefited, in either of the following methods, as the board of township commissioners may determine.

(1). By an assessment of each lot or piece of land, in proportion to its frontage abutting on the sewer, allowing such reduction in the case of properties abutting on more than one sewer as the ordinance may specify: Provided, That no assessment by frontage shall be made on property of such a character as not to be lawfully subject to such manner of assessment. The ordinance providing for assessment by this method shall specify the manner in which the charge on each lot shall be calculated and ascertained.

(2). By an assessment in proportion to benefits, whether the property charged abuts on the sewer or not. The amount of the charge on each property to be ascertained in the manner hereinafter provided.

(3). By an assessment of a special sewer-tax on all properties located within the sewer district, by a pro rata on the assessed valuations thereof, as established for general taxation; and such tax may be levied for a single year or for a term of years, as the commissioners may determine at their discretion, and shall be collected as other taxes are collected under existing laws.

When a township shall be divided into sewer districts the assessment in each district may be by different methods.

Sec. 3, Act of February 23, 1905, P. L. 22.

This method of assessing benefits was held constitutional except so far as it authorizes the assessment of benefits where the sewer had passed through private lands. In such cases the land is taken, injured or destroyed by virtue of the power of eminent domain, and in the assessment of damages the owner cannot be deprived of his constitutional right of a trial by jury: *Anderson v. Lower Merion Twp.*, 217 Pa., 369.

312. In all cases where the second method of assessment is adopted, that is an assessment according to benefits, the board of township commissioners shall appoint three disinterested citizens residing anywhere in the Commonwealth, as viewers, neither of whom shall be a resident of that portion of the township which is accommodated by the sewers in question. The said viewers or a majority of them, having been sworn or affirmed to perform their duties with fidelity and impartiality, shall assess upon each and every piece of land located within the sewer district, which in the opinion of said viewers is benefited by the construction of said sewer or sewer system, whether abutting on a sewer or not, such amount as in the judgment of the viewers represents the benefit accruing to such lot: Provided, That the aggregate of the assessments in any sewer district shall not exceed the amount charged to said district for its share of the



cost of sewer construction, ascertained as provided in section two. The ordinance or resolution appointing said viewers shall specify the compensation to be received by them for their services, which, with the expenses incident in their proceedings and their report, shall be paid from the funds of the township.

Sec. 4, Act of February 23, 1905, P. L. 22.

See *Anderson v. Lower Merion Twp.*, 217 Pa., 369, infra section 311.  
note.

313. The said viewers or a majority of them shall make report, in writing, specifying the amount assessed by them on each lot or parcel of land, and shall file the same with the town clerk within such times as the ordinance appointing the viewers shall have directed. After the report is filed, the said viewers shall cause public notice thereof to be given by publication for two weeks in two newspapers published in the township, or, if there be not two newspapers so published, then in such other manner as to the viewers may seem proper; and such advertisement shall state a time, not less than fifteen days after the filing of the report, and a place where the said viewers will meet and exhibit their report, and hear all exceptions and objections thereto on behalf of any property owners or by representatives of the townships. And after the hearing of said objections, the said viewers shall make whatever changes they may deem proper in their report. When such revision is made, and the report is made complete and absolute, it shall then be presented to a stated meeting of the board of commissioners, who shall by ordinance confirm the same, or may in their discretion refer the same back to the viewers for further correction, or may set the same entirely aside and appoint new viewers.

Sec. 5, Act of February 23, 1905, P. L. 22.

See *Anderson v. Lower Merion Twp.*, 217 Pa., 369, infra section 311.  
note.

314. As soon as the amounts of the assessments charged upon the several properties are finally established, either by ordinance making assessments according to frontage or by a report of viewers making assessments according to benefits, the commissioners shall cause a schedule of such assessments, specifying in each instance the name of the owner, the size and location of the property and the amount of the assessment, to be delivered to the township treasurer; and said charges shall be payable to the treasurer, for the use of the township; and the commissioners shall also cause bills to be made out for the amounts charged against various properties, which shall be payable to the township treasurer, and the bills shall be forthwith sent to all property owners, respectively, residing in the township, and mailed to those residing elsewhere, whose address is known; and notice shall also be given by publication, in such manner as the commissioners may direct.

At the expiration of thirty days from the date of delivery of said schedule to the township treasurer, he shall certify to the township commissioners all amount then remaining unpaid, and the commissioners may file in the court of common pleas for the proper county a municipal lien against each property, for the amount with which it stands charged, in the manner prescribed by existing laws. Notice to this effect shall be printed on all bills sent out to the property owners, as hereinbefore provided.

Sec. 6, Act of February 23, 1905, P. L. 22.

See *Anderson v. Lower Merion Twp.*, 217 Pa., 369, supra section 311 note.

315. Proceedings taken under any of the provisions of this act shall not preclude the township commissioners from also requiring payment of a monthly or annual rate by persons using the sewers, as authorized by law; and nothing in this act shall be construed to prevent the township commissioners from taking proceedings to cause assessments for benefits from the construction of sewers, to be made by a jury appointed by the proper court, in the manner prescribed by existing laws; it being intended that the methods provided by this act shall be alternative and not exclusive.

Sec. 7, Act of February 23, 1905, P. L. 22.

See *Anderson v. Lower Merion Twp.*, 217 Pa., 369, supra section 311 note.

## (2) Construction of Sewers and Drains and Assessment of Cost According to Benefits.

316. From and after the passage of this act, every township of the first class of this Commonwealth shall have power (to lay out, establish, or re-establish grades of streets or alleys, or parts thereof, and) to construct (bridges, piers, and abutments thereof, (therefor), and) sewers and drains, in any street or alley, or through or on or over private property. (Every township of the first class shall also have power, upon the petition of a majority of property owners in interest, based upon the number of feet fronting and abutting on the line of the proposed improvement, to be verified by affidavit of one or more parties to said petition, to grade, pave, curb, macadamize, or otherwise improve, any public street or public alley, or part thereof, within its corporate limits, or which may be, in whole or in part, boundaries thereof.) Such township of the first class is hereby authorized to ascertain, levy, and collect the costs, damages, and expenses of the sewer (or grading, paving, curbing, macadamizing, or other improvement, of each street or alley) in the manner following:—

Said township of the first class, or any person or persons interested, may, at any time after such work or labor has been done or material

urnished or damage done, present its, her, his or their petition in any court of common pleas of the proper county, or to any law judge thereof in vacation; and the court shall appoint three discreet and disinterested persons as viewers, and appoint a time, not less than twenty or more than thirty days thereafter, when said viewers shall meet upon the line of the improvement and view the same and the premises affected thereby. The said viewers shall give at least ten days' notice of the time of their first meeting, by publication in one or more newspapers, published in the township of the first class, or of general circulation, published in the county in which it is situated, and by handbills posted upon the premises, or otherwise, as the said court shall direct, having regard to the circumstances of the case.

Sec. 1, Act of May 23, 1913, P. L. 348.

The duties enjoined by this section would be now performed by the viewers appointed under the provisions of the Act of June 23, 1911, P. L. 1123.

317. The said viewers, having been duly sworn or affirmed faithfully, justly and impartially to decide and a true report to make concerning all matters and things to be submitted to them, or in relation to which they are authorized to inquire in pursuance of the provisions of this act, and having viewed the premises and examined the property, shall hear all parties interested and their witnesses; and shall estimate and determine the value of property taken, injured or destroyed, to whom the same is payable; and shall assess the costs and expenses of the sewer, (or grading, paving, curbing, macadamizing, or otherwise improving, said street, lane or alley,) upon the property benefited, according to benefits; and having so estimated and determined the damages, together with the benefits as hereinbefore mentioned, they shall prepare a schedule thereof, and give notice to all parties to whom damages are allowed, or upon whom assessments for benefits are made, of a time, not less than ten days thereafter, and of a place, where said viewers shall meet and exhibit said schedule and hear all exceptions thereto and evidence thereon. Notice of the time and place of said meeting shall be in the manner provided by law for the service of a summons in personal action, upon all parties allowed damages or assessed benefits, as shown by said schedule, if the parties can be found in the municipality, or upon an adult person residing upon the property affected by the assignment, in case the owner or reputed owner cannot be found. And to all other persons by publication in the newspaper in which the first notice of said view was published. When no service is made upon the owner, reputed owner, or upon an adult person residing upon the property affected, said notice, where publication



thereof has also been made, shall be deemed to have been properly served if tacked or conspicuously posted upon the premises. After making whatever changes are deemed necessary, the said viewers shall make report to the court, showing damages and benefits allowed and assessed in each case; and file therewith a plan showing the improvement, the properties taken, injured, or destroyed thereby, and the properties thereby benefited. When said report is filed, notice shall be given by publication once in the newspaper or newspapers publishing the notice provided for in section one of this act. Said notice shall state the date of the filing of the report, and shall contain a schedule of the damages and benefits as shown therein; and shall further state that, unless exception thereto be filed within thirty days from the date of filing, the said report will be confirmed absolutely.

Sec. 2, Act of May 23, 1913, P. L. 348.

318. The payment of damages sustained, and costs and expenses incurred, by the making of the improvements aforesaid, may be made either in whole or in part by said township of the first class, or in whole or in part by assessments upon the property benefited by such improvement, as said viewers may determine and the court approve; and, in the latter case, the viewers appointed having first estimated and determined the damages apart from the benefits, shall also assess said damages, or so much thereof as they deem just and reasonable, upon the properties peculiarly benefited by the improvements, including in the said assessment all property for which damages have been allowed, if, in their judgment, such properties will be benefited thereby, and shall report the same to said court; the total assessment for benefits to pay damages, costs and expenses shall not exceed the total costs, damages and expenses awarded and agreed upon.

Sec. 3, Act of May 23, 1913, P. L. 348.

319. The viewers provided for in the foregoing sections may be appointed at any time before, or at any time after, the entry, taking, appropriation, or injury of any property or materials for constructing said improvements, or the commencement of the improvements above set forth. All court costs incurred in the proceedings shall be defrayed by said township of the first class.

Sec. 4, Act of May 23, 1913, P. L. 348.

320. Upon the report of said viewers, or any two of them, being filed in said court, any party interested may, within thirty days thereafter, file exceptions to the same; and the court shall have power to confirm said report, or to modify, change, or otherwise correct the same, or change the said assessments made therein, or refer the



come back to the same or new viewers, with like power as to their report. When said report is first filed in court the prothonotary thereof shall mark the same confirmed nisi, and, in case no exceptions are filed thereto within thirty days, he shall enter a decree (as of course)\* that the said report be confirmed absolutely. Within thirty days after the confirmation, modification, changing, or correction of any report, any interested party may appeal from the said decree to the superior Court or to the Supreme Court, as the case may be. The said report, when as finally confirmed, shall be conclusive as to any assessments made therein to pay the costs, damages, and expenses of said improvement. Within thirty days after said report is filed in court, as aforesaid, any party whose property is taken, injured or destroyed, or who is assessed benefits to pay damages for property taken, injured or destroyed, may appeal to the court of common pleas, and demand a trial by jury according to the course of the common law. Upon the trial of any such appeal in court, the report of viewers, as finally approved, confirmed, modified or changed by the court, shall be prima facie evidence of the benefits as therein mentioned; and in case the party appellant does not obtain a verdict more favorable than was the report of the viewers, as finally confirmed, modified or changed, the said appellant shall not recover any costs on the appeal. No appeal under this act shall prevent the filing of liens by any township of the first class for any assessment made by said report; but upon the final determination of the issue, the court shall make such order as to lien or liens filed as shall appear right and proper.

Sec. 5, Act of May 23, 1913, P. L. 348.

### (3) Power to Join with Municipalities for Sewage Purposes.

321. From and after the passage of this act any (municipality and) township of the first class in the Commonwealth may connect with the sewer or sewers owned by any adjacent or adjoining municipality, for sewage purposes, in the manner and subject to the conditions hereinafter prescribed.

Sec. 1, Act of July 17, 1901, P. L. 668.

This section was repealed so far as it confers any powers or imposes any duties on boroughs by the Act of May 14, 1915, P. L. 312.

As to the powers of townships generally to join with municipalities for sewer purposes, see *supra* sections 300 and 301.

322. Whenever any (city or borough or) township of the first class shall desire to connect with the sewer of any adjacent municipality, for sewage purposes, an application shall be made by councils to the court of quarter sessions of the proper county, setting forth that fact; and if the court shall be of the opinion that his

can be done without in any way impairing the usefulness of the existing sewer, it shall appoint three viewers, who shall personally view and inspect the sewer and the proposed connection therewith, and investigate all other facts in the case, and levy and assess the damages, or proportionate part of the expense of building the original sewer, which the petitioning municipality should pay, and also fix the proportion of the expense for repairs which each municipality shall thereafter bear, and determine all other questions liable to arise in connection therewith; and thereupon report to the court the result of their investigation and deliberations, which said report shall be confirmed within thirty days after the filing, unless an appeal should be taken therefrom, which appeal shall be prosecuted as similar appeals are now by law required to be prosecuted; and either party may appeal from the decision of the court of quarter sessions to the Superior Court.

Sec. 2, Act of July 17, 1901, P. L. 668.

This section was repealed so far as it confers any powers or imposes any duties on boroughs by the Act of May 14, 1915, P. L. 312.

This section seems incomplete in that it does not authorize the township authorities to make the application provided in the section.

#### (4) Sewers Under State and County Highways.

323. From and after the passage of this act, townships of the first class of this Commonwealth shall have power to construct sewers and drains in and under any county or State highway, within the bounds thereof: Provided, That in case of the construction of said sewers upon county highways, the consent of the county commissioners of the county wherein said township of the first class is located shall first be obtained: And provided, That in the case of the construction of sewers upon any State highway, the consent of the State Highway Commissioner first be obtained.

Sec. 1, Act of May 23, 1913, P. L. 353.

324. Whenever sewers have been or shall be laid or constructed by any first class township in and under such highways, such township of the first class is hereby authorized to ascertain, levy, and collect the costs and expenses of the construction thereof from the abutting property holders, in the manner provided by law for the ascertainment, levy, and collection thereof where sewers are laid in the highways of said township.

Sec. 2, Act of May 23, 1913, P. L. 353.

## XI.

### WATER SUPPLY AND WATER WORKS.

#### (a) Provisions Relating to Both First and Second Class Townships.

325. (Two or more boroughs, or) any borough or township, may unite in the construction or acquisition and maintenance of works for the supply of water to such (boroughs or) townships.

Sec. 1, Act of June 1, 1911, P. L. 541.

This section was repealed so far as it confers any powers or imposes any duties on boroughs by the Act of May 14, 1915, P. L. 312. Section 17 of Article XVII, Chapter VI of said Act of 1915 provides: "Two or more boroughs may unite, or any borough may unite with a township, in the construction or acquisition and maintenance of works for the supply of water."

326. The construction of water-works, as provided for in section one of this act, shall be after plans for such water-works have been filed with the Commissioner of Health, and a permit issued by him in accordance with the Act of Assembly of April twenty-second, one thousand nine hundred and five, (P. L. 260), entitled "An act to preserve the purity of the waters of the State for the protection of the public health."

Sec. 2, Act of June 1, 1911, P. L. 541.

This section was repealed so far as it confers any powers or imposes any duties on boroughs by the Act of May 14, 1915, P. L. 312. Section 18 of Article XVII, Chapter VI of said Act of 1915 provides: "The construction of water-works as provided for in the preceding section shall be after plans for such water-works have been filed with the State Commissioner of Health, and a permit issued in accordance with the Act of Assembly of April twenty-second, one thousand nine hundred and five, page two hundred and sixty, entitled 'An act to preserve the purity of the waters of the State for the protection of the public health.'"

326 a. Whenever two or more boroughs, or any borough and township, having united in the construction or acquisition and maintenance of water-works, or hereafter uniting for the purpose of constructing or acquiring and maintaining water-works, desire to avail themselves of the provision of this act, the councils of such boroughs and the commissioners or supervisors of such township shall, by joint action, after ordinance or resolution duly passed, apply to the court of common pleas of the proper county for the appointment of a commission of water-works in accordance with this act. Said

commission shall be composed of citizens of each of said boroughs and townships so uniting.

Sec. 10, Act of June 5, 1913, P. L. 445.

The act referred to in this section is the act establishing a commission of water-works in boroughs and incorporated towns, approved June 5, 1913, P. L. 445. The remaining provisions of that act do not affect townships. The section ten above cited seems to have been inserted in the act to cover the particular boroughs and townships that have jointly erected water-works under the provisions of the Act of June 1, 1911, P. L. 541, *supra* sections 325 and 326.

327. From and after the passage of this act, any water company obtaining its water supply, or any part thereof, from a source lying within the corporate limits of any (municipality, city, borough, or) township, in this Commonwealth, shall furnish such municipality and the inhabitants thereof with water, or otherwise forfeit its rights to a sufficient quantity of water, from such source, as will supply the needs of such (municipality, city, borough, or) township, and the inhabitants thereof.

Sec. 1, Act of May 28, 1907, P. L. 278.

328. Should any water company fail to furnish water to any (municipality, city, borough, or) township, or the inhabitants thereof, under the conditions described in section one of this act, it shall be the duty of (the city or borough council,) the commissioners or supervisors of the township, as the case may be, to pass a resolution setting forth the fact that the municipality and the inhabitants thereof are not being served with water, and that they desire the same; a copy of which resolution shall be served on the president, secretary, or attorney, of the water company having its source of supply within the corporate limits of the municipality thus affected; whereupon it shall be the duty of such water company to prepare a statement, setting forth in full its reasons for its failure to supply water to the affected district; which statement must also include any plans in contemplation, if there be any, to supply water at some future time to such district, stating when such supply may be expected; which statement must be verified by oath or affirmation by the president or secretary of such water company, and filed with the State Water Supply Commission, at Harrisburg, within thirty days from the date of service of the original notice on such water company by the municipality affected.

Failure on the part of the president or secretary of such water company to file a statement as above directed, shall be deemed a misdemeanor on their part, and, upon conviction thereof, they shall be sentenced to undergo an imprisonment not exceeding six months and may a fine not exceeding one thousand dollars, or either or both, at the discretion of the court. If, in the judgment of the State Water



Supply Commission, the reasons filed are of such a character as to indicate that no relief will be given in the municipality complaining, in the way of a water supply, within a reasonable time, then the said State Water Supply Commission may recommend to the Governor that letters patent be issued and a charter granted to any association of individuals who may legally form a water company, and who may apply for the same, and who will agree, in their application for a charter, to supply water to the (municipality, city, borough, or) township thus affected, and the inhabitants thereof, and for that purpose to have the right to condemn, take, or appropriate a sufficient quantity of water, from any source of supply lying within the corporate limits of any (municipality, city, borough, or) township thus affected, as is adequate to supply the needs of such (municipality, city, borough, or) township, and the inhabitants thereof: Provided, however, That any municipality, where conditions prevail such as are described in sections one and two of this act, shall have the right, with the consent and approval of the State Water Supply Commission, to condemn, take, or appropriate a sufficient quantity of water, from any source of supply lying within the corporate limits of any municipality or municipalities affected, as is adequate to meet the needs of such municipality or municipalities, and the inhabitants thereof, and no damages shall be collected by, or allowed to, any water company for any water appropriated under the provisions of this act.

Sec. 2, Act of May 28, 1907, P. L. 278.

(b) Provisions Relating Exclusively to First Class Townships.

329. Any township of the first class is empowered to contract with any adjoining municipality, owning a waterworks system, for a supply of water for public and private uses, to be delivered into the lines of the township at or near the boundary thereof.

This section does not authorize a contract between a township of the first class and a municipality for the supply of water in territory being supplied by a private company.

Sec. 1, Act of April 9, 1915, P. L. 70.

The Act of July 9, 1901, P. L. 627, amending Clause V of Section 7 of the Act of April 28, 1899, P. L. 104, *supra* section 61, authorizes townships of the first class to enter into contracts with any person or corporation to supply water for fire protection.

See also Act of June 1, 1911, P. L. 541, *supra* sections 325 and 326, for general power of townships to join with municipalities in the construction, acquisition and maintenance of works for the supply of water.

330. A township making such contract may, by ordinance, provide and regulate and protect a system of distribution of the water. After a certified copy of the plans and surveys for such system with

a description of the sources from which it is proposed to derive the supply, are filed in the Department of Health, and a written permit for the construction of such system obtained from the Commissioner of Health, in accordance with the provisions of the act of April twenty-second, one thousand nine hundred and five, (P. L. 260), entitled "An act to preserve the purity of the waters of the State for the protection of the public health."

Sec. 2, Act of April 9, 1915, P. L. 70.

331. In providing for regulating and protecting and extending its system of distribution of water, the township may occupy public highways; and may take, injure, or destroy private property, compensation for which taking, injury, or destruction to be made or secured as hereinafter in this act provided. No highway under the jurisdiction of the State Highway Department shall be occupied until a permit therefor has been obtained from the State Highway Department. Property belonging to or used as a cemetery, or a place of public worship, or any public or parochial school, or other educational or charitable institution or seminary, shall not be taken, injured, or destroyed by virtue of this act.

Sec. 3, Act of April 9, 1915, P. L. 70.

332. If the compensation and damages arising from such taking, injury, or destruction of private property cannot be agreed upon, the township may tender its bond as security to the party claiming or entitled to any damages, or to the attorney or agent of any absent person, or to the agent or other officer of a corporation, or to the guardian or committee of any person under legal incapacity. The condition of the bond shall be, that the township shall pay, or cause to be paid, such amount of damages as the party shall be entitled to receive, after the same shall have been agreed upon or assessed in the manner provided in this act. In case the party or parties claiming damages refuse or do not accept the security so tendered, the township shall then give the party, his or their agent, attorney, guardian or committee, at least ten days' written notice of the time when the same will be presented to the court of common pleas for approval. Thereafter the township may present its bond to the court, and when approved the said bond shall be filed in court for the benefit of those interested; and recovery may be had thereon, for the amount of damages finally determined, if the same be not paid, or cannot be made by execution on the judgment in the issue formed to try the question; and upon the approval of said security the township may enter into possession, take, hold, use, and enjoy said land, for the purpose aforesaid, forever.

Sec. 4, Act of April 9, 1915, P. L. 70.

333. In case the compensation or damages accruing from such taking, injury, or destruction has not been agreed upon by the parties in interest, the court of common pleas, or any law judge thereof in vacation, on applicaiton thereto by the township or any person interested in such property, shall appoint three members of the board of viewers of the county as a board of view; and appoint a time, not less than ten nor more than twenty days thereafter, when the board of view shall meet upon the property and view the same, and the premises affected thereby. The board of view shall give at least five days' personal notice of the time of their first meeting, upon the owners, agents, attorneys or representatives thereof, if the same reside within the county; otherwise, by handbills posted upon the premises, or by such other notice as the court shall direct. The board of view, having been dnly sworn or affirmed faithfully, justly and impartially to decide and true report to make concerning all matters and things submitted to them in relation to which they are authorized to inquire under the provisions of this act; and having viewed the premises or examined the property, shall hear all parties interested and their witnesses; and, having due regard to the advantages and disadvantages, shall estimate and determine the damages for the property taken, used, or appropriated, and to whom the same are payable. They shall give at least ten days' notice thereof, in the manner herein provided, to all parties interested, of the time and place when the board of view will meet and exhibit said report and hear any exceptions thereto. After making whatever changes are deemed necessary and proper, the board of view shall make report to the court, showing the damages, if any are allowed; and file therewith a plan showing the properties taken, injured, or destroyed, and the names of the persons to whom such damages are payable.

Sec. 5, Act of April 9, 1915, P. L. 70.

334. When the report of the board of view, or any two of them, is filed in court, any party may, within thirty days thereafter, file exceptions to the same; and the court may confirm the report, or modify, change or otherwise correct it, or refer it back to the same or new viewers, with like power as to their report. Or within thirty days from the filing of any report in court, any party whose property is so taken, used, or appropriated may appeal to the court of common pleas of the county, and demand a trial by jury. Any party interested therein may, within thirty days after final decree, have an appeal to the Superior or the Supreme Court. If no exceptions are filed or no demand made for trial by jury within the said thirty days after the filing of said report, the same shall become absolute. The court may order what notices shall be given in con-

nection with any part of said proceedings, and may make all such orders as it may deem requisite.

Sec. 6, Act of April 9, 1915, P. L. 70.

335. The board of view provided for in this act may be appointed before or at any time after the entry, taking, or appropriation of any property to be used for the purpose aforesaid. They shall have power to administer oaths, and adjourn their hearings from day to day as they may find necessary.

Sec. 7, Act of April 9, 1915, P. L. 70.

336. The costs of the board of view, and all court costs incurred in the proceedings, including advertising and printing and posting notices, shall be defrayed by the township.

Sec. 8, Act of April 9, 1915, P. L. 70.

337. All damages, when determined, shall be assessed against and paid by the township so taking, injuring, or destroying the property as aforesaid.

Sec. 9, Act of April 9, 1915, P. L. 70.

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## XII

### PUBLIC BUILDINGS.

(a) Provisions Relating to Both First and Second Class Townships.

338. Hereafter in the letting of contracts for the erection and construction of any public building when plans and specifications for same shall be submitted for bids, the same shall be accompanied by a bill or list of quantities of materials required for such building, to be prepared and furnished by the architect or engineer preparing the plans, which bill or list shall be attached to the specifications, and shall be (for) a guide to bidders in making their estimates of materials required, and a means by which bidders may test their own estimates: Provided however, That the correctness of such bill or list of materials shall not be taken as being guaranteed by the authorities submitting such plans and specifications for bids.

Sec. 1, Act of July 2, 1895, P. L. 426.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

339. Hereafter in the preparation of specifications for the erection, construction, and alteration of any public building, when the entire



cost of such work shall exceed one thousand dollars, it shall be the duty of the architect, engineer, or other person preparing such specifications, to prepare separate specifications for the plumbing, heating, ventilating, and electrical work; and it shall be the duty of the person or persons authorized to enter into contracts for the erection, construction, or alteration of such public buildings to receive separate bids upon each of the said branches of work, and to award the contract for the same to the lowest responsible bidder for each of said branches.

Sec. 1, Act of May 1, 1913, P. L. 155.

This act was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

340. Sheriffs, constables, members of the State constabulary, or other persons authorized by the laws of this Commonwealth to make arrests, hereafter shall have the use, for a period not to exceed forty-eight hours, of (borough and) township lockups (and city or county prisons,) for the detention of prisoners until they can be disposed of according to law, if found necessary by the officer in charge.

Sec. 1, Act of April 23, 1909, P. L. 141.

341. (Boroughs, cities, and) townships shall be entitled to receive a compensation of fifty cents per day, of twenty-four hours, for each prisoner so incarcerated, from the treasury of the county having jurisdiction over the prisoner.

Sec. 2, Act of April 23, 1909, P. L. 141.

The county is liable for persons confined in a city lock-up for a statutory offense, but not for violation of a city ordinance: *McKeesport v. County*, 21 Dist. 326.

342. From and after the passage of this act, (all boroughs, incorporated towns, and) all townships shall have the power to acquire, enter upon, take, use, and appropriate private property and also land heretofore granted or dedicated to a public use which is no longer used for the purpose for which the same was granted or dedicated, for the erection thereon of town hall, hose-house, lock-up, and such other public buildings as are necessary for public and municipal purposes within the corporate limits of such municipality, whenever the (council or) board of commissioners or township supervisors thereof shall by ordinance determine thereon; the compensation and damages arising from such taking, using, and appropriating of private property, for the purposes aforesaid, shall be considered, ascertained, determined, awarded and paid in the manner hereinafter provided: Provided, That no land or property belonging to or used for any cemetery, burying-ground, or place of public worship shall be taken or appropriated in any manner, under and by virtue of the provisions of this act.

Sec. 1, Act of April 15, 1913, P. L. 66, amending Sec. 1, Act of June 10, 1901, P. L. 55, as amended by the Act of May 5, 1911, P. L. 168. Sec. 1 of the Act of 1901 was also amended by the Act of June 1, 1907, P. L. 365, which amendment was overlooked by the Act of 1911. However the amendment of 1907 did not apply to townships. The Act of June 10, 1901, P. L. 555, in its original form did not apply to townships but was extended thereto by the amendments of May 5, 1911, and April 15, 1913. This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

343. If the compensation and damages arising from such taking, using and appropriating of private property, for the purposes aforesaid, cannot be agreed upon by the owners thereof and such municipalities, it shall be lawful for such municipalities to tender its bond as security to the party claiming or entitled to any damages, or to the attorney or agent of any absent person, or to the agent or other officer of a corporation, or to the guardian or committee of any person under legal incapacity; the condition of which shall be, that the said municipality shall pay or cause to be paid such amount of damages as the party shall be entitled to receive, after the same shall have been agreed upon or assessed in the manner provided in this act. In case the party or parties claiming damages refuses or do not accept the security so tendered, the said municipality shall then give the party, his or their agent, attorney, guardian or committee, at least ten days' written notice of the time when the same will be presented in any court of common pleas of the county in which the land so to be acquired, taken, used or appropriated is situate, for approval; and thereafter the said municipality may present its bond to said court of common pleas, and, when approved, the said bond shall be filed in said court for the benefit of those interested, and recovery may be had thereon for the amount of damages ascertained or finally determined, if the same be not paid or cannot be made by the execution on the judgment in the issue formed to try the question; and upon the approval of said security, said municipality may enter into possession, take, hold, use and enjoy said land, for the purposes aforesaid, forever.

Sec. 2, Act of June 10, 1901, P. L. 555.

This section was extended to townships by the Act of April 15, 1913, P. L. 66, supra section 342, which amended section one of this Act of 1901. This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

344. Whenever the municipal authorities shall desire to take any lands heretofore granted or dedicated to a use or purpose for which the same are no longer used, they shall pass an ordinance declaring such intention, and they shall thereupon petition the court of common pleas of the county in which such lands are situate for leave to file the bond of such (borough) for the purpose of securing any person or persons who may be injured by the taking of such

ands; and the said court shall thereupon direct such notice to be given, by publication in at least two newspapers of the county in which such lands are situate, as to the said court shall seem proper, and if no exceptions are filed to the said bond on or before the day fixed in said notice, the court shall approve the said bond. The said court shall have power to increase the amount of said bond, and to hear and determine all exceptions that may be filed against the approval thereof. Upon the approval of such bond, the said municipal authorities shall have the right to enter upon and take such lands, for the purposes expressed in this act, and the said bond, which shall be in the name of the Commonwealth, for the use of any person or persons who may be legally entitled to damage by reason of the taking of the said lands, shall remain on file for their use and benefit.

Sec. 3, Act of June 10, 1901, P. L. 555.

This section was extended to townships by the Act of April 15, 1913, P. L. 66, supra section 342, which amended section one of this Act of 1901. This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

345. In case the compensation for damages accruing from such appropriation has not been agreed upon by the parties in interest, any court of common pleas of the proper county, as aforesaid, or any law judge thereof in vacation, on application thereto by said municipality or any person interested in such land and property, shall appoint three discreet and disinterested freeholders as viewers, and appoint a time, not less than ten nor more than twenty days thereafter, when said viewers shall meet upon the property and view the same and the premises affected thereby. The said viewers shall give at least five days' personal notice of the time of their first meeting, upon the owners, agents, attorneys, or representatives thereof, if the same reside within the county in which such municipality is located; otherwise, by handbills posted upon the premises, or by such other notice as the court shall direct. The said viewers, having been duly sworn or affirmed faithfully, justly and impartially to decide and true report to make concerning all matters and things to be submitted to them, in relation to which they are authorized to inquire under the provisions of this act, and having viewed the premises or examined the property, shall hear all parties interested and their witnesses; and, having due regard to the advantages and disadvantages, shall estimate and determine the damages for the property taken, used or appropriated, and to whom the same are payable; they shall give at least ten days' notice thereof, in the manner herein provided, to all parties interested, of the time and place when said viewers will meet and exhibit said report and hear any exceptions thereto. After making whatever changes are deemed necessary and proper, the said viewers shall make report to the



court, showing the damages if any allowed, and file therewith a plan showing the properties acquired, taken, used and appropriated, and the names of the persons to whom such damages are payable.

Sec. 4, Act of June 10, 1901, P. L. 555.

This section was extended to townships by the Act of April 15, 1913, P. L. 66, supra section 342, which amended section one of this Act of 1901. This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

346. Upon the report of said viewers, or any two of them, being filed in said court, any party may within thirty days thereafter file exceptions to the same, and the court shall have power to confirm said report, or to modify, change or otherwise correct the same, or refer the same back to the same or new viewers, with like power as to their report. Or within thirty days from the filing of any report in court, any party whose property is so acquired, taken, used or appropriated, may appeal to the court of common pleas of said county and demand a trial by jury; and any party interested therein may, within thirty days after final decree, have an appeal to the Superior or the Supreme Court. If no exceptions are filed or no demand made for trial by jury, within the said thirty days after the filing of said report, the same shall become absolute. The said court of common pleas shall have power to order what notices shall be given in connection with any part of said proceedings, and may make all such orders as it may deem requisite.

Sec. 5, Act of June 10, 1901, P. L. 555.

This section was extended to townships by the Act of April 15, 1913, P. L. 66, supra section 342, which amended section one of this Act of 1901. This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

347. The viewers, provided for in this act, may be appointed before or at any time after the entry, taking or appropriation of any property to be used for the purpose aforesaid. They shall have power to administer oaths, and adjourn their hearings from day to day as they may find necessary.

Sec. 6, Act of June 10, 1901, P. L. 555.

This section was extended to townships by the Act of April 15, 1913, P. L. 66, supra section 342, which amended section one of this Act of 1901. This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

348. The costs of the viewers and all court costs incurred in the said proceedings, including advertising and printing and posting notices, shall be defrayed by the said municipality; and each of the said viewers shall be entitled, as compensation, to a sum not exceed



ing five dollars per day for every day necessarily employed in the performance of the duties herein prescribed.

Sec. 7, Act of June 10, 1901, P. L. 555.

This section was extended to townships by the Act of April 15, 1913, P. L. 66, supra section 342, which amended section one of this Act of 1901. This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

349. All damages, when ascertained and determined, shall be assessed against and paid by the municipality so taking, using and appropriating the property, as aforesaid.

Sec. 8, Act of June 10, 1901, P. L. 555.

This section was extended to townships by the Act of April 15, 1913, P. L. 66, supra section 342, which amended section one of this Act of 1901. This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

350. The supervisors, road commissioners or other officers having in charge the constructing and keeping in repair the public roads in any township in this Commonwealth, are hereby authorized, at their option, to cause a suitable lot of ground to be procured and cause a suitable building to be erected thereon for a town house in which to hold elections, store road machinery, hold meetings of township officers, and for other township uses.

Sec. 1, Act of June 26, 1895, P. L. 324.

It seems this act would apply to townships of the first class. See section 3, Act of April 28, 1899, P. L. 104, supra section 47. Section 3 of this act has been comprehended under the subject of taxation. See sections 359 and 386 infra.

351. For the purpose of procuring a lot of ground and erecting a building thereon, as provided in the first section of this act, it shall be lawful for the supervisors, road commissioners or other officers having in charge the constructing and keeping in repair the public roads or highways in any township, to borrow money at a rate of interest not exceeding six per centum, and issue bonds therefor: Provided, That the total indebtedness incurred by any township, under this act, shall not exceed one-half of one per centum of the assessed value of real estate of such township.

Sec. 2, Act of June 26, 1895, P. L. 324.

(b) Provisions Relating Exclusively to Second Class Townships.

352. The supervisors of the several townships of this Commonwealth shall have the right to levy a tax for the purpose of building and maintaining a suitable place for the purpose of incarcerating criminals, disorderly, suspicious and intoxicated persons, until they can be dealt with according to law. Said building to be under the

care of said supervisors. Provided, That said supervisors of townships shall not erect or maintain said buildings without obtaining the assent of the electors thereof, expressed by vote at an election to be held at the place, time and under the same regulations as provided by law for the holding of municipal elections; and it shall be the duty of the judges, inspectors and clerks of such elections to receive tickets, either written or printed, from electors qualified under the Constitution of this State to vote in such district, labelled on the outside "Lockup Building," and on the inside the words, written or printed, "For lockup building" or "Against lockup buildings," to be deposited in a box provided for that purpose. In receiving and counting and in making returns of the votes cast, the inspectors, judges and clerks of said election shall be governed by the laws of this Commonwealth regulating municipal elections, and the vote shall be counted by the court as is now provided by general laws governing municipal elections: Provided, The constables of said townships, by direction of the supervisors, shall also issue proclamation, ten days prior to date of said municipal election, that the qualified electors will vote "For or against building a lockup."

Sec. 1, Act of May 11, 1901, P. L. 169.

The power to levy a tax for the purposes expressed in this act has been included in the subject of taxation and has been here retained to make the entire section readable.

Quaere: Whether this ballot should be in the form prescribed by section 14 of the act of June 10, 1893, P. L. 419, as amended by the act of April 29, 1903, P. L. 338? See *McLaughlin v. Summit Hill Borough*, 224 Pa., 425.

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### XIII.

#### TAXATION.

(a) Provisions Relating Exclusively to Townships of the First Class.

353. Except so far as modified by the provisions of this act, all existing laws relating to townships shall continue in force until changed, modified or repealed as to either class of townships, by legislation relating expressly thereto.

Sec. 3, Act of April 28, 1899, P. L. 104.

For other provisions relating to taxation in first class townships, and comprehended by this section, see sections 402-487 infra.

354. Hereafter the Board of Township Commissioners of every township of the first class within this Commonwealth shall each year, within sixty days after its organization, estimate the several amounts of money which will be required for the several specific purposes of township government and expenses during the current fiscal year, and by ordinance, adopted and advertised according to law, appropriate

ut of the revenues available for said year the specific sums so estimated to be required; and the tax levied by the township authorities shall be fixed at such figure, within the limit fixed by law, as, with all other sources of revenue, will meet and cover said estimate and appropriation; the total appropriation not to exceed the revenues available for the said fiscal year. The said ordinance shall be open to the inspection of any taxpayer of said township, or his, her, or its authorized representatives: Provided, That if the funds available from taxation or other sources shall be estimated to be in excess of the requirements of the current fiscal year, a specific appropriation may be made for the payment of township orders or indebtedness of the previous year.

Sec. 1, Act of April 27, 1909, P. L. 198, supplementing the Act of April 28, 1899, P. L. 104.

355. All the corporate power, authority and franchise of the township shall be vested in and exercised by the Board of Township Commissioners; and the said board shall have particularly the following powers:

(6). To levy for township purposes an annual tax of not more than one per centum.

Part of Sec. 7, Act of April 28, 1899, P. L. 104.

356. The board of township commissioners of the several townships of the first class of this Commonwealth shall have the right to levy a tax for the purpose of building and maintaining a suitable place for the housing of engines, hose-carts, and other apparatus for the extinguishment of fire. Said building to be under the care of said board of township commissioners: Provided, That said board of township commissioners of said townships of the first class shall not erect or maintain said buildings without obtaining the assent of the electors thereof, expressed by vote at an election to be held at the place, time, and under the same regulations, as provided by law for the holding of municipal elections; and it shall be the duty of the judges, inspectors, and clerks of such elections to receive tickets, either written or printed, from electors qualified under the Constitution of this State to vote in such district, labelled on the outside "Fire-engine house," and on the inside the words, written or printed, "For-engine house" or "Against fire-engine house," to be deposited in a box provided for that purpose. In receiving and counting and in making returns of the votes cast, the inspectors, judges, and clerks of said election shall be governed by the laws of this Commonwealth regulating municipal elections; and the vote shall be counted by the court as is now provided by general laws governing municipal elections: Provided, the constable of said townships, by direction of the board of township commissioners, shall also issue proclamation, ten

days prior to date of said municipal election, that the qualified electors will vote "For or against building a fire-engine house."

Sec. 1, Act of March 18, 1909, P. L. 40.

357. The cost and expense of caring for said trees after having been planted or set out, and the expense of publishing the notice provided for in section three, shall be borne and paid for by a general tax, to be levied annually in the manner that taxes for township (borough, and city) purposes are now levied in such townships of the first class, (boroughs, or cities;) such tax not to exceed the sum of one-tenth of one mill on the dollar on the assessed valuation of the property in such townships of the first class, (boroughs, or cities;) and the needed amount shall each year, in due time, be certified by the shade-tree commissioners to the proper authorities charged with the assessment of taxes in said townships, (boroughs, or cities,) to be assessed and paid, as other taxes are assessed and paid, and to be drawn against as required by said commissioners, in the same manner as moneys appropriated for township, (borough, or city) purposes are now drawn against in said townships, (boroughs, or cities;) Provided, That the commissioners of any township of the first class (and the councils of any borough or city,) accepting the provisions of this act, may provide for the expense of the maintenance of trees on highways, in accordance with the provisions of this section by actual appropriation, equal to the amount certified to be required by the said commission, in lieu of the specific assessment above authorized.

Sec. 5, Act of May 31, 1907, P. L. 349.

This section has been repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312. In order to clarify the reading of this section it should be read in connection with the section relating to the establishing of a shade tree commission, see *infra* sections 622 to 628.

358. The charge for sewer construction in any township of the first class may be assessed upon the properties accommodated or benefited, in either of the following methods, as the board of township commissioners may determine:

(3). By an assessment of a special sewer-tax on all properties located within the sewer district, by a pro-rata on the assessed valuations thereof, as established for general taxation; and such tax may be levied for a single year or for a term of years, as the commissioners may determine at their discretion, and shall be collected as other taxes are collected under existing laws.



When a township shall be divided into sewer districts the assessment in each district may be by different methods.

Part of Sec. 3, Act of February 23, 1905, P. L. 22.

This act provides three methods by which the cost of sewer construction may be collected. The other two methods incorporated in section 311 supra are repeated in this note for the purpose of clarity. They are as follows:

(1). By an assessment of each lot or piece of land, in proportion to its frontage abutting on the sewer, allowing such reduction in the case of properties abutting on more than one sewer as the ordinance may specify: Provided, That no assessment by frontage shall be made on property of such a character as not to be lawfully subject to such manner of assessment. The ordinance providing for assessment by this method shall specify the manner in which the charge on each lot shall be calculated and ascertained.

(2). By an assessment in proportion to benefits, whether the property charged abuts on the sewer or not. The amount of the charge on each property to be ascertained in the manner hereinafter provided.

This method of assessing benefits was held constitutional except so far as it authorizes the assessment of benefits where the sewer had passed through private lands. In such cases the land is taken, injured or destroyed by virtue of the power of eminent domain, and in the assessment of damages the owner cannot be deprived of his constitutional right of a trial by jury: *Anderson v. Lower Merion Twp.*, 217 Pa. 369.

359. For the purpose of procuring a lot and erecting a building thereon and paying the indebtedness incurred under this act, the supervisors, road commissioners or other officers having in charge the constructing and keeping in repair the public roads and highways in the several townships of this Commonwealth, are hereby authorized to collect annually, in cash, a tax not exceeding fifty per centum of the rate of assessment by them, respectively, laid in each year for road purposes; such tax to be collected in the same manner that other cash taxes are now by law collected.

Sec. 3, Act of June 26, 1895, P. L. 324.

See supra sections 350 and 351 for the power to procure the land and erect a town house for which this section authorizes the imposition of a tax.

360. If necessary for the payment of the machinery, implements and materials mentioned and referred to in the first section of this act, the supervisors, road commissioners or other proper officers having in charge the opening, constructing and repairing of public roads, highways and bridges in the several townships of this Commonwealth, may and they are hereby authorized to collect annually, in cash, not exceeding twenty-five per centum of the rates or assessments by them respectively laid in each year for road purposes, such cash tax to be collected in the same manner that other road taxes not worked out are by law collected.

Sec. 2, Act of May 24, 1887, P. L. 202.

The references in this section are to section one of the same act, which though already incorporated in section 116 supra, is repeated in this note for the purpose of clarity. The section is as follows:

"From and after the passage of this act the road commissioners and other officers having in charge the opening, constructing and repairing of public roads, highways and bridges in any township in this Commonwealth, are hereby authorized, at their option, to purchase for the use of their respective districts, plows, scrapers, road machines and such other implements and materials as may from time to time be found necessary in the opening, constructing and repairing of said roads, highways and bridges."

See *Scraper Company v. Pine Township Supervisors*, 4 D. R., 501, where a peremptory mandamus was issued ordering the levy of this tax in order to pay the cost of road machinery duly contracted by the township, and when there were no available funds in the treasury to meet the purchase price.

See notes on section 116 supra.

Quaere. Whether the power to levy this tax is supplied by section 8 of the Act of July 22, 1913, P. L. 915, supra 182.

361. When it shall be shown to the court of quarter sessions of any county of this state that the debts due by any (district or township in the said county shall exceed the amount which supervisors (or overseers) may collect in any year by taxation, as at present regulated, or when the proper officers refuse to levy a tax for the purposes set forth in the seventh section of the act of the twenty fifth of February, one thousand eight hundred and thirty-five, (P. L. 45,) it shall and may be lawful for said court, after ascertaining by proper means the amount of indebtedness of any particular (district or) township, by a writ of mandamus to direct the proper officers by special taxation, to collect an amount sufficient to pay the same. Provided always, that if the amount of such indebtedness, is so large as to render it unadvisable to collect the same in any one year taking into consideration other necessary taxation, the said court may direct the same to be levied and collected by annual instalments or proportions, as may be adjudged reasonable and proper, and may order such special taxes to be levied and collected during such successive years as may be required for payment of the same.

Sec. 1, Act of March 31, 1864, P. L. 162.

This section was amended by the Act of May 24, 1887, P. L. 183, but the amendment was repealed by the Act of May 8, 1889, P. L. 122. In *Endlich* on the interpretation of statutes, section 475, it is said that "the repeal of an act amending another so as to read in a given manner, which operates as a total merger of the amended act in the amending one cannot revive the original statute." Following this text it would seem that this act was no longer in force. However, proceedings are still had under this act as is evidenced by the decision in *Gilloy v. Duryea Boro.*, 228 Pa., 252, and for this reason has been incorporated in the text.

362. From and after the passage of this act, all unnaturalized foreign-born residents shall be subject to the payment of all taxes, assessed by virtue of the authority (of this Commonwealth,) of any

county, city, borough,) township (or school district,) within said Commonwealth, in the same manner and under the same penalties as citizens of this Commonwealth now are: Provided, that this act shall not apply to any poll-tax which may be assessed for the purpose of qualifying citizens to vote.

Sec. 1, Act of March 30, 1911, P. L. 38.

363. For the purpose of this act, any unnaturalized foreign born person who shall reside or live within the boundaries of the Commonwealth of Pennsylvania for one whole year shall be considered resident, and shall be subject to the provisions of this act.

Sec. 2, Act of March 30, 1911, P. L. 38.

364. The county commissioners of the several counties shall, on or before the first day of April each year, at the expense of the county, furnish to the township commissioners of each township of the first class, for its use, a properly certified duplicate of the last adjusted valuation of all real estate, personal property, and occupations made taxable for county purposes in such township of the first class. Such duplicate shall state the name of each taxable, with the valuation, description, and kind of property and occupation of such taxable.

Sec. 1, Act of May 5, 1915, P. L. 258.

365. Hereafter no law of this Commonwealth rendering moneys owing by solvent debtors liable to be assessed and taxed for any purpose shall be construed and held to make the same liable, to be assessed and taxed for (borough and) township purposes; but the same shall be exempt from any charge, tax or assessment for any such purposes: Provided, That nothing in this act contained shall be held to apply to any case in which such taxes have been heretofore actually assessed and paid.

Sec. 22, Act of April 25, 1850, P. L. 569.

366. Whenever a tax is levied by a Board of Township Commissioners, it shall be the duty of the Board to forthwith deliver a duplicate of the assessment of such tax to the township treasurer, who shall thereby become authorized to receive and collect from the taxpayers the amounts with which they stand charged respectively, and to give receipts therefor. On receipt of any such duplicates it shall be the duty of the treasurer to give public notice as soon thereafter as conveniently can be done, by at least ten written or printed notices to be posted in the most public places in the township, and by advertisement in a newspaper published in the township, if any such there be. A discount of five per centum shall be allowed to any tax-



payer who shall make payment in sixty days from the time of such notice.

Sec. 15, Act of April 28, 1899, P. L. 104.

A treasurer of a township of the first class, under the Act of April 28, 1899, P. L. 104, must account for the whole amount of the tax duplicates delivered to him, not merely for all moneys belonging to the township funds that may come into his hands. If he cannot collect the whole amount, the auditors may exonerate him, but it is his duty to show such inability:

*In re Bryn Mawr Trust Co., 14 D. R. 17.*

The Act of May 1, 1909, P. L. 305, amending section 7, of the Act of June 25, 1885, P. L. 187, provides for the posting of notices and allows a discount if the taxes are paid within 90 days. See *infra* section 428.

Quaere. Whether this Act of May 1, 1909, P. L. 305, supplies the above section of the Act of 1899, or whether it is restricted to second class townships.

367. The office of township tax collector, in townships of the first class, is hereby abolished, and from and after the expiration of the respective terms of the township tax collectors now in office, all taxes imposed on and accruing from persons and property within the respective townships of the first class of this Commonwealth, including all State, county, borough, township, school and poor taxes, and all taxes levied by other authorities empowered, or which may hereafter be empowered, to levy taxes within the several townships of the first class of this Commonwealth, shall be collected by the township treasurer of the respective townships of the first class, who shall for that purpose have all the powers, perform all the duties, be subject to all the obligations and responsibilities and receive the same compensation as are now by law vested in, conferred upon, or imposed upon collectors of the several classes of taxes hereinbefore mentioned, or which such collectors are now by law authorized or empowered to have and exercise, or are vested with, or are made liable or subject, or are entitled to receive.

Sec. 1, Act of May 28, 1907, P. L. 273.

Under this act the treasurer has the duty of collecting school taxes, and if he stands ready to furnish the bond required by section 550 of the Act of May 18, 1911, P. L. 309, mandamus will compel the school directors to deliver to him the tax duplicate: *Star v. Barrett, 22 D. R. 36.*

This act repeals the local Act of April 15, 1863, P. L. 492, relating to Coal township, Northumberland county, and authorizes the collection of poor taxes by the township treasurer: *Dane v. Coal Twp., 19 D. R., 983.*

The local Act of March 17, 1868, P. L. 342, relating to the collection of taxes in Montgomery county, is repealed by the Act of May 28, 1907, P. L. 273, so far as the local act gave the county treasurer power to collect taxes in townships of the first class. The act, however, did not repeal the rate of compensation allowed the collector of State and county taxes. *Murphy v. County Comm., 20 D. R., 863.*



It seems that the township treasurer as collector of taxes gives a separate bond under the Acts of June 6, 1893, P. L. 333, infra section 391, and May 8, 1909, P. L. 474, infra section 425, amending section 3 of the Act of June 25, 1885, P. L. 187.

368. All the laws or parts of laws, general, local or special, inconsistent herewith, be and the same are hereby repealed; it being the purpose and intent of this act that no taxes shall be collected in any township of the first class of this Commonwealth, save only by the treasurer of the said township.

Sec. 2, Act of May 28, 1907, P. L. 273. The amendment of May 1, 1909, P. L. 301, held unconstitutional in *Cornman v. Hagginbotham*, 227 Pa., 549. ....

369. Each township treasurer of each and every township of the first class within this Commonwealth, within thirty days after receiving the tax duplicate, shall notify every taxable whose name shall appear on such duplicate. Such notice shall contain the rate of taxation, the valuation of the property of such taxable, the occupation of such taxable, the full amount of taxes for which said taxable shall be liable for the current year. Such notice shall further state that such taxes are payable, shall designate a place and time, or times, and when they shall be paid; and shall further state the time within which an abatement of tax will be allowed, when the full amount of tax will be collected, and when an additional percentage will be added as a penalty. Such notice shall be mailed to the last known post office address of each of said taxables.

Sec. 1, Act of May 20, 1913, P. L. 248.

370. It shall be lawful for the said township treasurers to retain, out of the respective taxes collected by them, such actual printing and postage expenses as shall be incurred by them in performing the duties herein prescribed. Such amounts, so retained, shall be audited by the township auditors at the time of auditing the treasurer's accounts.

Sec. 2, Act of May 20, 1913, P. L. 248.

371. Before any allowance is made by the township auditors for commissions due to the township treasurer for taxes collected, an affidavit shall be made by the treasurer setting forth that he had complied with the provisions of this act.

Sec. 3, Act of May 20, 1913, P. L. 248.

372. Any township treasurer failing to comply with the provisions of this act shall forfeit all right to commission on any taxes received and collected by him from any taxable not notified as herein provided.

Sec. 4, Act of May 20, 1913, P. L. 248.

373. At the expiration of three months from the time of receiving the duplicate of any tax assessed as aforesaid, the treasurer shall proceed to collect the same from the taxpayers, and to that end may appoint one or more deputy collectors. And said treasurer and his deputies shall have and exercise all powers conferred by existing laws on township tax collectors.

Sec. 16, Act of April 28, 1899, P. L. 104.

Deputy collectors may be appointed under section 51 of the Act of April 15, 1834, P. L. 509, *infra* section 466.

374. All persons who shall fail to make payment of any tax charged against them in the assessment duplicate, made by the Board of Township Commissioners, within the period of six months from the date of publication of notice thereof by the township treasurer as provided in the act to which this is a supplement, shall be charged with a penalty of five per centum additional on the amount of tax so left unpaid, which penalty shall be added to the tax by the treasurer and collected by him or his deputy, as provided in said act.

Sec. 1, Act of June 4, 1901, P. L. 361, supplementing Act of April 28, 1899, P. L. 104.

See the Act of May 1, 1909, P. L. 305, amending section 7, Act of June 25, 1885, P. L. 187, *infra* section 428, providing for the adding of a penalty.

Quære. Whether this act is supplied by the Act of May 1, 1909, or whether that act is restricted to second class townships.

375. Each township treasurer shall receive as full compensation for his services a sum equal to five per centum of all taxes received or collected by him, and in addition thereto a sum equal to one per centum on all other moneys received or collected by him, unless a different rate be fixed by ordinance of the township commissioners passed thirty days prior to his election.

Act of June 7, 1907, P. L. 452, amending Sec. 14, Act of April 28, 1899, P. L. 104.

#### (b) Provisions Relating Exclusively to Second Class Townships

376. The board of township supervisors shall annually, before their organization meeting in December, or as soon thereafter as practicable, make or cause to be made written estimate of the amount of money which should be raised in the township for the ensuing year, beginning on the first Monday of December, for the purpose therein set forth, which shall be filed with the treasurer. Such estimates for the purpose of aiding the board in determining how much road tax to levy shall specify:—

First. The amount of money necessary to be levied and collected for the maintenance, repair, and improvement of highways, including sluices;

second. The amount of money to be levied and collected for the repair and construction of culverts and bridges;

third. The amount of money to be levied and collected for the purchase, hire, repair, and custody of tools, implements, and machinery.

fourth. The amount of money necessary to be levied and collected for the payment of debts, or other miscellaneous purpose.

Sec. 11, Act of July 22, 1913, P. L. 915.

77. The board shall proceed to levy a road tax, not later than the fourth Monday of March of each year, which tax shall not exceed ten mills on each dollar of the assessed valuation. This valuation shall be the last adjusted valuation used for the county rates and taxes, and shall be furnished to the said township supervisors by the commissioners of the proper county: Provided, That if any further adjustment of valuation of any property is made by the county commissioners, after said tax is so levied and before said tax is payable, such valuation so adjusted shall be certified to the township supervisors, and to the township collector of taxes, by the commissioners of the proper county, and the tax shall be collected on the basis of such valuation as so adjusted: Provided, That a greater rate than ten mills, and not to exceed ten additional mills, may be levied by order of the court of quarter sessions of the peace of that county, upon petition of the board of supervisors, with their unanimous commendation and upon due cause shown: Provided, however, that the said road tax shall hereafter be collected in cash, and no such taxes shall be payable in labor or worked out.

Part of Sec. 1, Act of June 11, 1915, P. L. 947.

This act amends section 5 of the Act of July 22, 1913, P. L. 915. This act supplies section 25 of the Act of April 15, 1834, P. L. 509.

See note to section 427 for certain duties of tax collector.

78. The supervisors of the several townships of this Commonwealth shall have the right to levy a tax for the purpose of building and maintaining a suitable place for the purpose of incarcerating criminals, disorderly, suspicious and intoxicated persons, until they can be dealt with according to law.

Part of Sec. 1, Act of May 11, 1901, P. L. 169.

See supra section 352 for the remaining provisions of this section.

79. From and after the passage of this act, the supervisors of the several townships of the second class, throughout this Commonwealth, be and are hereby authorized and empowered, upon the petition of a majority, of the real estate owners of any or either of the said townships, to levy and collect, in each and every year from and after the date of the receipt by them of the said petition, an annual



tax, upon the assessed valuation of each of the said several townships of the second class, for county purposes, in addition to the tax which they are already authorized by law to levy and collect, a special additional tax, not exceeding a per centum of five mills on each dollar of such assessed valuation, which shall include, not only real estate but also occupation and all other valuations.

Sec. 1, Act of April 23, 1909, P. L. 168.

A contract between supervisors and an electric light company for lighting a township road, is void under this act, where less than a majority of real estate owners of the township petition for the levy of a tax or where one of the supervisors is a stockholder of the electric company:

*Dreese v. Freed*, 42 Pa., C. C., 242.

For the application of this tax see section 380 infra.

380. The money so raised and collected shall be used, laid out, and expended for the following purposes, and none other; namely, for the purpose of properly lighting and illuminating the streets, highways, lanes and alleys, and other public places and property, of the said townships, with electric light, gas or other illuminating medium and of defraying the cost, charges and expense thereof. And for such purposes, the supervisors of the said townships are hereby authorized and empowered, from time to time, to make and enter into such contract or contracts, agreement or agreements, with any person or persons, company or companies, corporation or corporations, partnership or partnerships, as they may deem necessary, for a period not exceeding five years, for the purpose of securing and maintaining a permanent and sufficient supply of light in, upon, and within the roads, streets, highways, lanes, alleys, property, and other public places of their several townships aforesaid.

Sec. 2, Act of April 23, 1909, P. L. 168.

381. The township supervisors shall levy, for the maintenance of said lights, an annual tax upon the property abutting upon the said streets, highways and other public places, in the district benefited thereby, based upon the assessment for county purposes. Such tax shall become a lien against such property to the same extent, and with the same effect, as other liens for taxes now authorized by law and shall be collected in the same manner as other taxes; the collector of taxes to receive the same commission as on the road tax: Provided That no tax as herein provided shall be levied against any farm land nor shall any property be assessed hereunder, or included in the provisions hereof, unless the residence thereon shall be within five hundred feet of such highway.

Sec. 2, Act of May 28, 1913, P. L. 371.

The phrase "said lights" refers to those specified in section one of this act, which section already appearing in supra section 72 is repeated in this note for the purpose of clarity. This section is as follows:



The township supervisors of any township of the second class in this Commonwealth are hereby authorized and empowered, on the petition of the owners of a majority of the lineal feet frontage along any highway, or portion thereof, in any village within said township, to enter into contract with electric, gas or other lighting companies, to light and illuminate the streets, highways, and other public places in said villages with electric light, gas light, or other illuminant."

2. The township treasurer shall receive all taxes collected for lighting the highways; shall keep the same in a separate account, and shall pay out the same only on orders signed by the chairman of the township supervisors, attested to by the secretary, and shall make a report to the auditors of the township annually.

c. 3, Act of May 28, 1913, P. L. 371.

3. It shall be lawful for the supervisors of any township, in addition to the authority conferred by the twenty-fifth section of the act to which this is a supplement, to levy a rate or assessment, and collect the same, for the purpose of discharging any just debt, due a former supervisor or overseer of the poor.

c. 7, Act of February 28, 1835, P. L. 45.

This act supplements the Act of April 15, 1834, P. L. 509.

Section twenty-five of the original Act of 1834, referred to in the above section, does not appear in this compilation as its provisions have been supplied by section 1 of the Act of June 11, 1915, P. L. 947, amending section 5 of the Act of July 22, 1913, P. L. 915. See supra section 377.

In addition to the powers given to township supervisors to assess a tax for repairing roads and bridges, they have authority, under the Act of February 28, 1835, to levy and collect a rate of assessment for the purpose of discharging any ascertained debts due a former supervisor, though such debts may have been transferred to other parties: *Dunne v. Deegan & Groves*, 43 Pa., 334.

34. The supervisors shall levy, for the maintenance of fire-hydrants and the purchase of hose, et cetera, an annual tax upon the property abutting upon said highway, and in the district benefited thereby, based upon the assessment for county purposes. Such tax shall become a lien against such property, and shall be collected in the same manner as other taxes. The collector to receive the same commission as on the road tax.

c. 2, Act of May 25, 1907, P. L. 231.

Owners of property along a highway may petition supervisors to enter into contracts with water companies for the placing of fire-hydrants along a highway, under section 1 of this act, supra section 71, which reads as follows:

"The road supervisors of any township of the second class in this Commonwealth are hereby authorized and empowered, on the petition of the owners of a majority of the lineal feet frontage along any highway, or portion thereof, in any village within said township, to enter into contracts with water companies for the placing of fire-hydrants along said highway, for the protection of property from fire."

385. The township treasurer shall receive all taxes collected for fire protection and keep the same in a separate account, and pay the same out only on orders signed by the chairman of the board of supervisors, attested to by the secretary, and make a report to the auditors of the township annually.

Sec. 3, Act of May 25, 1907, P. L. 231.

386. For the purpose of procuring a lot and erecting a building thereon and paying the indebtedness incurred under this act, the supervisors, road commissioners, or other officers having in charge the constructing and keeping in repair the public roads and highways of the several townships in this Commonwealth, are hereby authorized to collect annually, in cash, a tax not exceeding fifty per centum of the rate of assessment by them, respectively, laid in each year for road purposes; such tax to be collected in the same manner that other cash taxes are now by law collected.

Sec. 3, Act of June 26, 1895, P. L. 324.

The power to procure the lot and erect the building for the payment of which a tax is by this section provided, appears in section 350 supra.

In order to make the above section clear, the aforesaid power, which reads as follows, is repeated in this note:

"The supervisors, road commissioners or other officers having in charge the constructing and keeping in repair the public roads in any township in this Commonwealth, are hereby authorized, at their option, to cause a suitable lot of ground to be procured and cause a suitable building to be erected thereon for a town house in which to hold elections, store road machinery, hold meetings of township officers, and for other township uses."

387. If necessary for the payment of the machinery, implements and materials mentioned and referred to in the first section of this act, the supervisors, road commissioners, or other proper officers having in charge the opening, constructing and repairing of public roads, highways and bridges in the several townships of this Commonwealth, may and they are hereby authorized to collect annually in cash, not exceeding twenty-five per centum of the rates or assessments by them respectively laid in each year for road purposes, such cash tax to be collected in the same manner that other road taxes now worked out are by law collected.

Sec. 2, Act of May 24, 1887, P. L. 202.

The power to purchase such machinery already incorporated in section 116 supra is repeated in this note for the purpose of clarity. It is as follows:

"From and after the passage of this act, the road commissioners and other officers having in charge the opening, constructing and repairing of public roads, highways and bridges in any township in this Commonwealth, are hereby authorized, at their option, to purchase for the use of their respective districts plows, scrapers, road machines and such other implements and materials as may from time to time be found necessary in the opening, constructing and repairing of said roads, highways and bridges."

See *Scraper Company v. Pine Township Supervisors*, 4 D. R. 501, where a peremptory mandamus was issued ordering the levy of this tax in order to pay the cost of road machinery duly contracted by the township, and where there were no available funds in the treasury to meet the purchase price. See notes to Section 360, supra.

Quaere: Whether the power to levy this tax is supplied by Section 8 of the Act of July 22, 1913, P. L. 915, supra 182.

388. When it shall be shown to the court of quarter sessions of any county of this state that the debts due by any (district or) township in the said county shall exceed the amount which supervisors or overseers) may collect in any year by taxation, as at present regulated, or when the proper officers refuse to levy a tax for the purposes set forth in the seventh section of the act of the twenty-fourth of February, one thousand eight hundred and thirty-five, (P. L. 183) it shall and may be lawful for said court, after ascertaining by proper means the amount of indebtedness of any particular (district or) township, by a writ of mandamus to direct the proper officers by special taxation, to collect an amount sufficient to pay the same: provided always, that if the amount of such indebtedness is so large as to render it unadvisable to collect the same in any one year, taking into consideration other necessary taxation, the said court may direct the same to be levied and collected by annual instalments in such proportions, as may be adjudged reasonable and proper, and may order such special taxes to be levied and collected during such successive years as may be required for payment of the same.

Sec. 1, Act of March 31, 1864, P. L. 162.

This section was amended by the Act of May 24, 1887, P. L. 183, but the amendment was repealed by the Act of May 8, 1889, P. L. 122. In *Endlich* on the interpretation of statutes, Section 475, it is said that "the repeal of an act amending another 'so as to read' in a given manner, which operates as a total merger of the amended act in the amending one cannot revive the original statute." Following this text it would seem that this act was no longer in force. However, proceedings are still had under this act as is evidenced by the decision in *Gilboy v. Duryea Boro.*, 228 Pa. 252, and for this reason has been incorporated in the text.

388a. Whenever timber, on land which is included in the class of land known as auxiliary forest reserves, is about to be harvested, the then owner of the timber on said land shall give a bond to the county treasurer in twenty per centum of the amount of the estimated value of the timber to be harvested, and to be approved by the court of the county, conditioned to pay to the county treasurer, within ninety days after harvesting, ten per centum of the value of the trees immediately at and before the time of harvesting; which amount shall be ascertained by statement and return, under oath or affirmation, furnished in triplicate, one to the county commissioners, one



to the county treasurer, and one to the commission, immediately after harvesting, by the then owner of the land, setting forth said value; which sum thus paid shall be divided and distributed by the county treasurer of each county—to the county, and to the poor district, the road district, and the school district of the township in which the auxiliary reserve is situated, pro rata, based upon the land assessed millage of taxation for county, poor, road, and school purposes within said taxing district.

Such sum of money when ascertained to be due as a tax by the filing of the foregoing statement and return, under oath, and, hereinbefore provided, directed to be paid to the county treasurer by the owner of an auxiliary forest reserve, shall, from the time of such filing, be and remain a lien upon the land of such owner until payment shall have been made: And be it further provided, That all moneys received by the boards of supervisors shall be appropriated exclusively to the opening, maintenance, and repair of the public roads now or hereafter passing through or into said auxiliary forest reserves, or upon which said reserves now or hereafter may abut, and, in the event that no public highways pass through or into said reserves, or none of said reserves abut on such highways, then said moneys shall be used for general township road purposes.

Sec. 3, Act of June 5, 1913, P. L. 405.

The provisions of this section which relate to the distribution and use of the tax thus realized are alone germane to this work. The entire section has, however, been incorporated in order to render it intelligible.

Under other sections of this act auxiliary forest reserves may not be assessed for a sum exceeding one dollar per acre. The assessment would of course be fixed by the county.

But see also Section 3 of the Act of June 5, 1913, P. L. 426, for provisions as to taxation when land has been classed as auxiliary forest reserves, and has been removed from such class, before maturity, by the action of the owner of the land.

In addition to the amount realized from the taxation of auxiliary forest reserves and the sum received under the above provisions of Section 3, of the Act of June 5, 1913, P. L. 405, such reserves are liable to a charge of two cents per acre under the Act of June 5, 1913, P. L. 408. This charge is payable by the State.

Under the Act of April 5, 1905, P. L. 111, State forest reserves are subject to a charge of two cents per acre for road purposes, which amount is also payable by the State.

389. From and after the passage of this act, all unnaturalized foreign-born residents shall be subject to the payment of all taxes assessed by virtue of the authority (of this Commonwealth) of any (county, city, borough,) township (or school district) within said Commonwealth in the same manner and under the same penalties as citizens of this Commonwealth now are: Provided, That this act



shall not apply to any poll-tax which may be assessed for the purpose of qualifying citizens to vote.

Sec. 1, Act of March 30, 1911, P. L. 38.

390. For the purpose of this act, any unnaturalized foreign-born person who shall reside or live within the boundaries of the Commonwealth of Pennsylvania for one whole year, shall be considered a resident, and shall be subject to the provisions of this act.

Sec. 2, Act of March 30, 1911, P. L. 38.

391. The qualified voters of every (borough and) township in the Commonwealth of Pennsylvania shall, on the third Tuesday of February, after the passage of this act, and triennially thereafter, vote for and elect one properly qualified person for tax collector in each of said districts, who shall serve for the term of three years, and shall give bond annually to be approved by the court.

Sec. 1, Act of June 6, 1893, P. L. 333.

By Section 3 of Article 8 of the Constitution as amended November 4, 1913, "All elections for judges of the courts for the several judicial districts, and for county, city, ward, borough and township officers, for regular terms of service, shall be held on the municipal election day; namely, the Tuesday next following the first Monday of November in each odd-numbered year, but the General Assembly may by law fix a different day, two-thirds of all the members of each House consenting thereto: Provided, That such elections shall be held in an odd-numbered year."

Under this Act of 1893 a tax collector was elected in each borough and township on the third Tuesday of February, 1894, and following the system established by the act, tax collectors were elected, at the municipal election in 1909, for a term of three years. This term was lengthened one year by the constitutional amendments of November 2, 1909, which also provided that the term of all such officers should continue until the first Monday of December of that year in which the term expired. This term was further lengthened until the first Monday of January next following, by the Act of March 2, 1911, P. L. 8, so that a tax collector elected at the municipal election in 1909 held office until the first Monday of January, 1914, and his successor was to be elected at the election in November in the year 1913, for a term of four years. The next election under this system would be in November, 1917.

The Act of June 6, 1893, P. L. 333, repeals the local Act of March 18, 1852, P. L. 153, relating to the collection of taxes in the townships of Longswamp and Bethel in Berks county: *Comm. ex rel. v. Commissioners*, 167 Pa. 186. Overruled in *Comm. v. Couch*, 209 Pa. 354, in which it was held that Section 13 of the Act of June 25, 1885, P. L. 187, relating to the collection of taxes in boroughs and townships, which provides that the act shall not apply to any taxes, the collection of which is regulated by local law, prevents the Act of June 6, 1893, P. L. 333, providing for the election of tax collectors for the term of three years in the boroughs and townships of the Commonwealth, from repealing the local Act of February 27, 1872, P. L. 179, which extended to Huntingdon county the provisions of the Act of April 13, 1868, P. L. 1017, establishing a special system for the collection of taxes in Bedford county.

The local law of April 13, 1868, P. L. 1017, providing for the collection of taxes in the county of Bedford recognized and retained by the Act of June 24, 1885, P. L. 187, is not repealed by the Act of June 6, 1893, P. L. 333, entitled "An act to authorize the election of tax collectors for the term of three years in the several boroughs of this Commonwealth:" *Comm. ex rel. v. Comm. of Bedford County*, 6 Pa. Sup. Ct. 211.

The Act of June 6, 1893, P. L. 333, repeals the local Acts of April 10, 1848, P. L. 443, and March 29, 1851, P. L. 284, so far as those acts related to the appointment of tax collectors, and tax collectors in the townships named in those local statutes are elected by popular vote, as in other portions of the State: *Buckwalter v. The County of Lancaster*, 12 Pa. Sup. Ct. 272. (The decision in this case is founded on the decision of the Supreme Court in *Comm. v. Wunch*, 167 Pa. 186, since overruled in *Comm. v. Couch*, 209 Pa. 354.)

The Act of March 1, 1867, P. L. 306, authorizing the election of an officer to be called constable and collector in the several townships and boroughs of Cameron county, and regulating his duties, is not repealed by the general Acts of June 25, 1885, P. L. 187, and June 6, 1893, P. L. 333, regulating the collection of taxes in the several boroughs and townships of the Commonwealth: *Sinnemahoning Iron and Coal Co. v. Shaffer*, 14 D. R. 368.

Under the Act of 1893, collectors of taxes in boroughs and townships are no longer required to give the separate bond referred to in the Act of 1891; only one bond is necessary and must be given in the form prescribed by the Act of 1885, and must be renewed annually with the approval of the court of quarter sessions: *Comm. v. Commissioners of Dauphin Co.*, 15 Pa. C. C. 233.

For other provisions relating to the bond of the collector of taxes in second class townships, see Act of May 8, 1909, P. L. 474, amending Section 3 of the Act of June 25, 1885, P. L. 187, *infra* Section 425.

392. The supervisors of each township shall make, or cause to be made, a duplicate designating the amount of road tax levied against each taxpayer of the township, and deliver the same to the township collector, who shall, after receiving said duplicate, give notice thereof in the same manner, as is now required by law in collection of State, county, and poor taxes, and shall give him a warrant to collect the tax, which shall be collected as follows, namely: That all taxpayers who pay their road tax to the collector before June first of each year an abatement of five per centum shall be made; on all road taxes paid to the collector between June first and October first, of each year, the taxpayers shall pay the full amount of the road tax levied against them; and on all road taxes remaining unpaid on the first of October, in each year, the collector shall add five per centum thereto as penalty for such delinquency, and shall collect said penalty in addition to the tax levied, said penalty to be his compensation for collecting said delinquent taxes. The tax collector shall be allowed two per centum on all taxes collected on this duplicate previous to the first day of June of each year, and five per centum on all taxes collected from June first to October first.

The tax collector shall keep correct accounts of all moneys collected, marking "paid" on his duplicate each taxable amount of tax, and the date on which paid; and said collector shall, on the first of each month, make a true and correct statement in writing to the secretary of the board of supervisors, for their use, of all taxes collected during the previous month, giving names of taxables and amount collected from each, and the total amount received; and said collector shall pay over, on the first day of each month, to the treasurer, all moneys collected during the previous month and take his receipt for same. In case of the refusal or neglect of any tax collector to comply with the provisions of this act, he shall be guilty of a misdemeanor, and on conviction shall be sentenced to pay a fine of not less than one hundred dollars, or to be imprisoned for a term not exceeding one year, or both, at the discretion of the court.

Sec. 14, Act of July 22, 1913, P. L. 915.

The notice to be given "as is now required by law in the collection of State, county and poor taxes," is evidently the notice required by the Act of May 1, 1909, P. L. 305, amending Section 7 of the Act of June 25, 1885, P. L. 187, *infra* Section 423.

393. Hereafter no law of this Commonwealth, rendering moneys owing by solvent debtors liable to be assessed and taxed for any purpose, shall be construed and held to make the same liable to be assessed and taxed for (borough and) township purposes; but the same shall be exempt from any charge, tax or assessment for any such purposes: Provided, That nothing in this act contained shall be held to apply to any case in which such taxes have been heretofore actually assessed and paid.

Sec. 22, Act of April 25, 1850, P. L. 569.

394. Each tax collector of the several (boroughs and) townships of this Commonwealth, within thirty days after receiving the tax duplicate, shall notify every taxable whose name shall appear on such duplicate. Such notice shall contain the rate of taxation, the valuation of the property of such taxable, the occupation of such taxable, the full amount of taxes for which said taxable shall be liable for the current year. Such notice shall further state that such taxes are payable, shall designate a place and time, or times, and when they shall be paid, and shall further state the time within which an abatement of tax will be allowed, when the full amount of tax will be collected, and when an additional percentage will be added as a penalty. Such notice shall be mailed to the last known post office address of each of said taxables.

Sec. 1, Act of May 5, 1911, P. L. 170.

This act is supplied by the Act of May 20, 1913, P. L. 248, as to townships of the first class, *supra* Sections 369 and 372.



395. It shall be lawful for the said tax collectors to retain, out of the respective taxes collected by them, such actual printing and postage expenses as shall be incurred by them in performing the duties herein prescribed. Such amount so retained shall be adjusted by the respective boards receiving such taxes.

Sec. 2, Act of May 5, 1911, P. L. 170.

This section is supplied as to first class townships by the Act of May 20, 1913, P. L. 248, supra Sections 369 and 372.

396. Before any allowance is made by the respective boards, receiving taxes, for commissions due to the collector for taxes collected, an affidavit shall be made by the collector, setting forth that he has complied with the provisions of this act.

Sec. 3, Act of May 5, 1911, P. L. 170.

This section is supplied as to first class townships by the Act of May 20, 1913, P. L. 248, supra Sections 369 and 372.

397. Whenever heretofore the qualified electors of any townships (or boroughs) of this Commonwealth shall have failed to elect a tax collector, or shall hereafter fail to elect a tax collector, as provided by existing laws; or when a tax collector heretofore elected or hereafter to be elected shall fail to qualify, as provided by existing laws, as such tax collector; or whenever a vacancy shall exist in the office of tax collector of the several townships (and boroughs) of this Commonwealth, and no person resident within such district is willing to accept the appointment of tax collector, it shall be lawful for the several authorities, empowered by law to levy and assess taxes to petition the court of quarter sessions of their respective counties for the appointment of a tax collector of such district.

Sec. 1, Act of April 27, 1909, P. L. 245.

398. Upon petition of the respective authorities empowered by law to levy and assess taxes, the court shall have power to appoint any citizen of the county to collect such taxes, and such collector, so appointed, shall have all the rights and powers now vested in tax collectors regularly elected and qualified under existing laws.

Sec. 2, Act of April 27, 1909, P. L. 245.

399. The tax collector, so appointed, shall qualify in like manner as is now provided by existing laws, and shall be paid such compensation as the authorities authorized to levy and assess taxes shall fix, subject to the approval of the court of quarter sessions making such appointment.

Sec. 3, Act of April 27, 1909, P. L. 245.

400. The courts of quarter sessions shall have power to fill by appointment all vacancies in the said office, within their respective coun-



es. And, if any person elected to fill said office shall fail to give bond and qualify as hereinafter provided, on or before the fourth day of the term of said court next ensuing his election, the said court shall declare his office vacant, and appoint a suitable person, resident of the proper borough or township, to fill the same.

Sec. 2, Act of June 25, 1885, P. L. 187.

The words "said office" relate to the office of tax collector. If a tax collector elected or appointed to fill a vacancy, fails to give bond as required by statute, a vacancy is not created, ipso facto, and does not exist, until specifically declared so by court: *Comm. ex rel. Koehler v. Lundenmoyer*, 5 North 165.

This act was held constitutional in *Com. ex rel. v. Lyter*, 162 Pa. 50.

401. If any vacancy shall take place in the office of tax collector after any (ward, district, borough or) township election, by reason of the erection of any new (ward, district,) township (or borough,) or from the neglect or refusal of any person elected to perform the duties of the office, or by death, resignation or otherwise, the court at quarter sessions of the proper county upon petition of (the township council or) any citizen who is a resident of said (borough,) township, (ward,) setting forth the fact that a vacancy does exist, shall appoint a suitable person to fill said vacancy for the full or unexpired term.

Sec. 1, Act of July 2, 1895, P. L. 434.

In case of a vacancy the appointee of the court holds office, until the period fixed by statute for the next triennial election, and not simply until the next annual election following: *Com. ex rel. Koehler v. Lundenmoyer*, 5 North 165.

If a borough is created out of territory embraced within the limits of a township, the office of tax collector of the township becomes vacant under the terms of the Act of July 2, 1895, if the incumbent of the office is at the time of the division of the township resident in the portion which becomes a borough. In such case the court of quarter sessions may appoint a successor to the office of tax collector of the township: *Comm. ex rel. v. Topper*, 219 Pa. 221.

#### (c) Provisions Relating to Both First and Second Class Townships.

402. The qualified voters of every (borough and) township in the Commonwealth of Pennsylvania, shall on the third Tuesday of February, Anno Domini one thousand eight hundred and eighty-nine, and triennially thereafter, vote for and elect a properly qualified person for assessor in each of said districts, who shall serve for three years.

Sec. 1, Act of February 14, 1889, P. L. 7.

A township assessor elected at the spring election of 1910 is entitled to hold office until the first Monday of December, 1913: *Comm. v. Sweigert*, 21 D. R. 280.

"The schedule for the amendments (to the Constitution of November 2, 1909,) embraced in Section 12 was adopted in order that no inconvenience

might arise in carrying into complete operation the changes in the Constitution. It provides that 'in case of officers elected by the people, all terms of office fixed by act of assembly at an odd number of years shall be lengthened one year, but the legislature may change the length of the term, provided the terms for which such officers are elected shall always be for an even number of years.' Assessors of property for the purposes of taxation under the Act of February 14, 1889, P. L. 7, were elected for a term of three years, and, without more, the terms of such officers at the time of the adoption of the amendments would have been extended one year. The schedule, however, declares that this extension 'shall not affect \* \* \* any city, ward, borough, township or election division officers whose terms of office, under existing law, end in the year 1910.' That was the year of the triennial election of assessors. The legislature incorporated in the schedule a special provision for the spring election of 1910. It declared that 'in the year 1910 the municipal election shall be held on the third Tuesday of February as heretofore; but all officers chosen at that election to an office the regular term of which is two years, and also all election officers and assessors chosen at that election, shall serve until the first Monday of December in the year 1911.' This language is perfectly plain, and no question as to what the Legislature meant by it could arise were it not for the next sentence in the section, which is as follows: 'All officers chosen at that election to offices the term of which is now four years or is made four years by the operation of these amendments or this schedule, shall serve until the first Monday of December in the year 1913.' Assessors, under the Act of 1889, are clearly included in this group. The assessors mentioned with election officers in the next preceding sentence must, therefore, be officers whose terms are not four years. The terms of assistant assessors, whose offices are created by the Act of June 16, 1891, P. L. 298, were one year and are now extended to two. Such officers were elected in February, 1910. Their duties relate exclusively to elections. Evidently they are assessors elected on the third Tuesday of February, 1910, mentioned in the schedule, who were to serve until the first Monday of December, 1911: See *Fiscus v. County Commissioners*, 59 Pitts. L. J. 555. Had the Legislature intended that assessors elected under the Act of 1889 in February, 1910, should serve no longer than the first Monday of December, 1911, it would doubtless have expressly excepted them from the operation of the provision relating to officers chosen in February, 1910, whose terms were or became four years: *Comm. v. Sweigert*, 21 D. R. 280. See also *Shilling v. Montgomery Co. Comm.*, 28 Montg. 130; and *Comm. v. Commissioners*, 10 Just. L. R. 135.

Under the above reasoning the next election of assessor would be held at the election in 1917 and under the Act of March 2, 1911, P. L. 8, the term of such an officer would begin on the first Monday of January.

In this compilation no provisions have been included relating to the duties of assessors. These duties are confined entirely to the making of an assessment for county purposes.

403. In townships of the first class the following township officers shall be chosen by the qualified voters at the township election on the third Tuesday in February.

Third. In the year in which the term of office expires of the township assessor who may be in office at the time of its organization, and

in every third year thereafter, a township assessor, who shall hold office for the term of three years, as provided by existing laws.

Part of Sec. 4, Act of April 28, 1899, P. L. 104.

The February election is abolished, and all township officers are now elected at the municipal election which election now occurs in an odd numbered year pursuant to the constitutional amendments of 1909. The term of the assessor is now four years. See constitutional amendments of 1909.

See also exposition of Section 1, Act of February 14, 1889, P. L. 7, supra Section 402.

404. In every year in which takes place the triennial assessment of property for taxation, the qualified voters in each township of the first class shall elect, at the township election, two citizens, resident in said township, to be assistant assessors; (and the triennial assessment of property for taxation, provided for by existing laws, shall be made in each township of the first class by the township assessor and the said assistant assessor, subject to correction by the County Commissioners and to appeal by taxable persons in accordance with existing laws: Provided, however, that for the triennial assessment which is to take place in the year of our Lord, one thousand nine hundred and three, two such assistant assessors shall be appointed by the board of township commissioners of each township of the first class.)

Sec. 1, Act of April 23, 1903, P. L. 284.

In view of the schedule to the Constitution of November 2, 1909, and the amendments to the Constitution changing the municipal election to every second year, this system seems no longer practicable.

405. The said assessors and assistant assessors shall make return, on oath or affirmation, to the township commissioners of the proper township, of the number of days actually employed by them in the performance of the duties of their office; and the township commissioners are hereby empowered to summon the respective assessors and assistant assessors before them, and examine them, upon oath or affirmation, as to the accuracy of the said return. When the township commissioners shall have determined, either from the returns of the assessors and assistant assessors or from their examination of them, as aforesaid, the number of days actually employed by them respectively, in the performance of duties of their office, they shall certify the same to the county commissioners; and the said certificates shall be final and conclusive as to the number of days actually employed by the said assessor and assistant assessors is (in) the performance of the duties of their office, upon which their compensation is to be calculated, as aforesaid.

Sec. 3, Act of May 20, 1913, P. L. 264.

This section applies only to first class townships.



406. If the electors of any township shall fail to choose an assessor or assistant assessor at the time appointed by law, or if any person elected to such office shall neglect or refuse to serve therein, or if an vacancy shall happen therein, by death or otherwise, the commissioners of the county shall appoint a fit person to fill the office who shall have the same powers, be subject to the same penalties, and receive the same compensation, as if he had been elected in manner aforesaid.

Sec. 87, Act of April 15, 1834, P. L. 537.

407. Whenever an assessor refuses or neglects to qualify as required by law, or refuses or neglects to receive the precept and book for the triennial or other assessment, the commissioners are hereby authorized to appoint a suitable person to serve as assessor on the eighth day after the time designated by law to begin the assessment.

Sec. 1, Act of May 5, 1897, P. L. 39.

408. Whenever the commissioners of any county shall, under existing laws, appoint a person to fill the office of assessor, such person shall serve until the next election for assessors, as provided by this act.

Sec. 4, Act of February 14, 1889, P. L. 7.

This section does not contravene Section 7, Article III of the Constitution which prohibits the passage of any local or special law "regulating the affairs of counties, cities, townships, wards, boroughs, or school districts." *Com. v. Coleman*, 9 Pa. C. C. 90.

409. In every case in which a rate or assessment shall be laid for township purposes, the same shall be levied upon the basis of the last adjusted valuation made as aforesaid for the purposes of regulating county rates and levies.

Sec. 27, Act of April 15, 1834, P. L. 509.

410. The supervisors (and overseers respectively) laying such rate or assessment, shall take to their assistance the township assessor for the time being, whose duty it shall be to furnish a correct copy of the last adjusted valuation in the township as aforesaid, and to give his aid in making such assessment.

Sec. 28, Act of April 15, 1834, P. L. 509.

The "last adjusted valuation" is now furnished by the county commissioners to first class townships under the Act of May 5, 1915, P. L. 258, *supra* Section 364, and to second class townships under the Act of June 11, 1915, P. L. 947, *supra* Section 377.

It is not necessary that the assessor should be present when the supervisors levy the road tax, except when the last adjusted valuation for county rates needs revision.

*Huddleson v. Thornbury Twp.*, 1 Del. Co. 124.



411. The supervisors (and overseers of the poor) of every township shall cause the rates or assessments by them (respectively) laid, to be entered in books to be prepared for the purpose which shall be signed by them (respectively,) and shall be deposited with the town clerk if there be one in the township, but if not, it shall remain with the supervisors (or overseers respectively,) and such town clerk, supervisors, (or overseers,) as the case may be, shall permit any inhabitant or other person charged with township rates and levies to inspect the same at all seasonable times without any fee or reward, and shall give copies of the same on demand, being paid at the rate of ten cents for every twenty-four names.

Sec. 29, Act of April 15, 1834, P. L. 509.

The levy of a tax which is not signed or entered on the township books as required by this section is invalid and the tax duplicates thereof are inadmissible in evidence. *Kitchen v. Smith*, 101 Pa. 452.

The office of town clerk was abolished by Section 2 of the Act of June 14, 1911, P. L. 942.

412. If any supervisor, (overseer) or town clerk, having charge of such book, shall refuse to permit any inhabitant or other person charged with township rates and levies to inspect the same, or shall refuse to give copies as aforesaid, he shall forfeit three dollars to the party grieved, to be recovered as debts of a like amount are recoverable.

Sec. 30, Act of April 15, 1834, P. L. 509.

413. It shall be lawful for any person aggrieved by such rate or assessment, to apply by petition to the next court of quarter sessions of the respective county, who shall have power to take such order thereupon as to them shall be thought expedient, and the same shall conclude and bind all parties.

Sec. 36, Act of April 15, 1834, P. L. 509.

This section is in form a proviso to Section 35 of said act, infra Section 458, although altogether independent of the preceding provisions of such section.

414. If any person, aggrieved by such rate or assessment, shall apply to a judge of such court, and give bond with surety to the satisfaction of such judge, it shall be lawful for such judge to make an order in writing, which shall stay all proceedings for the collection of the sum with which such person stands charged until such appeal be determined.

Sec. 37, Act of April 15, 1834, P. L. 509.

This section is in form a proviso to Section 35 of said act, infra Section 458, although altogether independent of the preceding provisions of such section.

415. The bond to be given in such case by the appellant shall be taken in the name of the township, in an amount equal to the sum with which such person stands charged, with condition for the payment of such sum, as by the determination of the next court of quarter sessions of the respective county, shall appear to be payable by him.

Sec. 38, Act of April 15, 1834, P. L. 509.

416. The supervisors (and overseers of the poor) of every township shall cause fair duplicates to be made of the rates or assessments by them respectively laid, which shall be signed by them, respectively, and shall issue their warrant, with such duplicates, to the collector of such rates and levies, therein authorizing and requiring him to demand and receive from every person in such duplicate named, the sum wherewith such person stands charged.

Sec. 33, Act of April 15, 1834, P. L. 509.

Section 15 of the Act of April 28, 1899, P. L. 104, *supra* Section 366, provides for the delivery of the duplicate to the township treasurer in townships of the first class. It is silent, however, as to the issuance of a warrant authorizing the collection of the taxes appearing in such duplicate. It is thought the treasurer can receive a warrant under the above provision.

417. The several (county, borough,) township, (school, poor and other) authorities now empowered, and which may hereafter be empowered to levy taxes within the several (boroughs and) townships of this Commonwealth, shall, on or before the first day of August in each year after the first election of collector of taxes under this act, issue their respective duplicates of taxes assessed to the collector of taxes of their respective (boroughs and) townships with their warrants attached, directing and authorizing him to collect the same, but road taxes may be worked out as heretofore: Provided, that such special and other road taxes as it may be lawful and necessary to collect in money, may, at the discretion of the supervisors or road commissioners, be placed in the hands of the collector of taxes, with their warrant for collection by him; for which he shall receive five per centum of the amount collected by him, or the same may be collected by the supervisors or road commissioners as heretofore. Provided further, that the limitations in this act, as to time and the requirements hereof relating to keeping an alphabetical list of persons charged with taxes, shall not apply to road taxes.

Sec. 4, Act of June 25, 1885, P. L. 187.

The statutory law relating exclusively to first class townships is silent as to when the commissioners shall make the levy and when the duplicate and warrant shall be delivered to the collector. It is thought that a warrant can be issued to the collector under this section. The provision

in this section providing for a commission of five per centum seems to be supplied by the Act of May 21, 1913, P. L. 284, *infra* Section 439.

Though road taxes are collectible by tax collectors under this act yet the "limitations as to time" do not apply thereto. The "special and other road taxes" the duplicates for which may be placed with the collector, at the discretion of the supervisors, are the special taxes authorized by the Acts of February 28, 1835, P. L. 46; March 31, 1864, P. L. 162; April 20, 1874, P. L. 67, and such ordinary taxes as have not been worked out after full opportunity given: *Kemmerer v. Foster Twp.*, 120 Pa. 153.

418. Every warrant to a collector issued as is hereinbefore provided, shall be effectual to authorize him to collect the sums charged in his duplicate during the period of (three) years from the date of his warrant.

Sec. 44, Act of April 15, 1834, P. L. 509.

The period of three years has been changed to two years by Section 21 of the Act of April 22, 1846, P. L. 486, *infra* Section 420.

419. Provided, That nothing herein contained shall authorize the arrest or imprisonment for non-payment of any tax of any female or infant, or person found by inquisition to be of unsound mind.

Sec. 45, Act of April 15, 1834, P. L. 509.

420. Hereafter the period during which warrants hereafter to be issued to collectors shall be effectual for the collection of taxes, shall be two years and no more; and so much of the forty-fourth section of the act of fifteenth of April, eighteen hundred and thirty-four, (P. L. 509) entitled "An act relating to county rates and levies," as is inconsistent herewith, be and the same is hereby repealed.

Sec. 21, Act of April 22, 1846, P. L. 486.

Section forty-four of the Act of April 15, 1834, P. L. 509, to which reference is made appears in Section 418, *supra*.

421. The collector of taxes shall have all the power for the collection of said taxes during his term of office heretofore vested in collectors of county taxes under existing laws, and be subject to the same liabilities and penalties for neglect or violation of the duties of his office.

Sec. 5, Act of June 25, 1885, P. L. 187.

Under the Act of June 25, 1885, the collector of taxes is collector of county, borough, township, school and poor taxes. Under this section he is vested with all the powers of a county collector in the collection of township taxes as well as being liable to all the penalties imposed upon county collectors.

422. Each collector of taxes before he assumes the duties of his office shall notify the county treasurer, in writing, setting forth his name, address, where the taxes are receivable, the office hours when

he sits to receive taxes, and the district or districts for which he collects taxes.

Sec. 1, Act of March 26, 1915, P. L. 11.

423. The county treasurer shall procure, at the expense of the county, a book to be known as the 'Tax Collectors' Address Book, wherein he shall cause to be set forth and indexed, by township (and by borough), and by name of collector, the information furnished him as required in section one of this act. Such book shall be kept in the office of the county treasurer, and shall be open during office hours to public inspection.

Sec. 2, Act of March 26, 1915, P. L. 11.

424. Any person, who neglects or refuses to comply with the provisions of this act shall on conviction summarily before any alderman, magistrate or justice of the peace be sentenced to pay a fine not more than fifty dollars.

Sec. 3, Act of March 26, 1915, P. L. 11.

425. The collector of taxes shall, before he enters upon the duties of his office, take and subscribe an oath of office, and file the same in the office of the court of quarter sessions of the proper county, and shall enter into a bond to the Commonwealth, in not more than the amount of taxes charged and assessed in the duplicates with at least two sufficient sureties or one trust or bonding company; said bond to be approved by the said court or a judge thereof in vacation, and filed in the office of the clerk of said court; the condition of which bond shall be that the said collector shall well and truly pay over or account for, according to law, the whole amount of taxes charged and assessed in the duplicate which shall be delivered to him.

Sec. 1, Act of May 8, 1909, P. L. 474.

This section amends Section 3 of the Act of June 25, 1885, P. L. 187.

The act supplies Section 43 of the Act of April 15, 1834, P. L. 509.

So much of this section as provides that the bond may be approved by "a judge thereof in vacation" is repealed by the Act of June 6, 1893, P. L. 333, supra Section 391. *Com. v. Com'rs of Bedford Co.*, 6 Pa. Super Ct. 211.

Under the Act of June 6, 1893, P. L. 333, infra Section 391, the bond above required must be renewed annually. *Com. v. Com'rs of Dauphin Co.*, 15 Pa. C. C. 233.

See infra Section 507 authorizing the townships to pay premiums of the bonds of township officers.

426. It shall and may be lawful for all the several courts of any county of this Commonwealth to require of the proper parties of any (borough,) township, (or district,) authorized and empowered to collect special taxes, a bond in such amount as the court shall direct, with one or more sureties, conditioned for the faithful collection and



paying over of all special taxes, directed to be assessed and collected for the purpose of paying indebtedness or any other purpose, in pursuance of the provisions of any law now in force or hereafter passed, which bond shall be filed in the said court for the protection of all parties interested therein; and in case the said officer or officers refuse or neglect to give security as aforesaid to be approved by the court within the time ordered by the court it shall nevertheless be the duty of such officer or officers to assess and to levy the said taxes as required by law, and the court may appoint a tax collector who shall collect the said taxes and pay the same into court, to be distributed by the court to and among the persons entitled thereto: Provided, that before such tax collector shall enter upon his duties, he shall give a bond with one or more sureties to be approved by the court, for the faithful performance of the duties of his appointment.

Sec. 1, Act of May 25, 1878, P. L. 150.

See *infra* Section 507 authorizing the township to pay the premiums of the bonds of township officers.

The fact that a person is elected general tax collector of a township does not of itself confer the right upon such person to collect special taxes.

Where a tax collector is required to perform a duty special in its nature and to give a special bond for its faithful performance no liability attaches therefor to his general bondsmen in the absence of an express declaration or an express statutory provision to the effect that they shall be so liable.

*Com. v. Perrego*, 40 P. S. C. 320.

427. If in any township there shall not be a treasurer elected or appointed, it shall be the duty of the supervisors and overseers of the poor of the township, either by themselves or by a proper person duly authorized by them, respectively, to collect the township rates and levies by them respectively laid: Provided, That in such case the supervisors and overseers shall, respectively, be accountable for the faithful collection thereof by the person so authorized by them respectively.

Sec. 39, Act of April 15, 1834, P. L. 509.

Originally the functions of the township were so limited that the "township rates and levies" were nothing but a road and bridge tax. The poor tax was sometimes considered a part of the township rates and levies, but it was a separate tax, levied by a different authority from the road and bridge tax, there was no good reason why it should have been so considered. The words "for such other purposes as may be authorized by law" in Section 25 of the Act of April 15, 1834, P. L. 509, had no immediate application at that time.

The purposes for which the township tax were levied were increased, but these purposes were, until 1895, of the nature of road and bridge purposes, that is, for paying debts due to supervisors and debts due by the townships themselves, which were presumably incurred for road and bridge purposes, for the purchase or hire of road machinery, and for the relocating and widening of roads. In many acts the township tax is referred to as the road tax.

On June 26, 1895, however, an act was passed (P. L. 324) providing for a special tax for the erection of a townhouse. The Act of May 11, 1901, P. L. 169, provided a special tax for the building and maintaining of a lockup; the Act of May 25, 1907, P. L. 231, providing for a tax for maintaining fire-hydrants, and the purchase of fire apparatus, and the Acts of April 23, 1909, P. L. 168, and May 28, 1913, P. L. 371, provide for a special tax for lighting streets and public places, to be levied upon the property abutting upon said streets and places.

The Act of July 22, 1913, P. L. 915, provides for a "road tax," and it appears from Section 11 of that act what expenses are to be paid out of that tax. These expenses are all connected with road and bridge purposes.

It is thought, therefore, that the provisions of the said Act of 1913, aside from the provisions that the road tax shall be collected by the township collector, a subject which will be discussed further herein, do not apply to the collection of the special taxes for townhouses, lockups, fire-hydrants and apparatus and street lighting.

The 39th Section of the Act of April 15, 1834, P. L. 509, provided that if in any township there should not be a treasurer elected or appointed, the township taxes should be collected by the supervisors or by a proper person duly authorized by them.

The 81st Section of the Act of April 15, 1834, P. L. 537, provided for the election in every township of a township treasurer. This clause was repealed by Section 2 of the Act of February 28, 1835, P. L. 46, as to all counties in the State, except the Counties of Erie, Franklin, Wayne, Venango, Warren, Susquehanna, Bradford, Tioga and Luzerne. Consequently in all counties, except those named, all township taxes were collected by the supervisors themselves or by persons appointed by them.

Section 7 of the Act of June 23, 1897, P. L. 196, the acts amendatory thereto, and the Act of July 22, 1913, P. L. 915, provide that the board of township supervisors shall appoint a treasurer, whose duties seem to be confined to the receipt of the road tax provided by the said acts, and the moneys received from the State for road purposes.

The question arises whether the officer so appointed succeeds to all the duties conferred upon the township treasurer who was elected under the provisions of the Act of 1834. The question is not without difficulty. It is believed, however, that the said treasurer so appointed is intended to succeed to all the duties aforesaid, because the 9th Section of the Act of July 22, 1913, P. L. 915, as amended by the Act of June 11, 1915, P. L. 947, providing for the bond of the appointed treasurer, provides that it shall be conditioned for the payment of "all moneys collected or paid by the State according to the provisions of this act and received by him only upon a written order signed by two members of the board of supervisors." The moneys would seem to be the moneys "collected or paid by the State according to the provisions of this Act." If this be the right construction, there is no provision in the Act of 1913 for the giving by the appointed township treasurer of a bond for the taxes received by him, and the inference is that the General Assembly intended that the provisions of the Act of 1834 relative to the bond of the township treasurer for "all moneys that may come into his hands," should apply to the appointed treasurer, and therefore that it was the intention that such treasurer should succeed to all the duties of the treasurer elected under the provisions of the Act of 1834.

The 5th Section of the Act of July 22, 1913, provides specifically that the road tax shall be collected by the township collector, and the question then arises, are the other township taxes to be collected by him, or are they to be collected by the township treasurer, elected by the supervisors, who succeeds to the functions of the township treasurer, provided for by the Act of 1834. Under the provisions of said Act of 1834 it was the duty of the supervisors or persons appointed by them to collect the township rates and levies only in townships where there should not be a treasurer. Where there was such a treasurer, by inference he collected the same. The township treasurer appointed by the supervisors succeeding, then, to the functions of the township treasurer elected under the provisions of the Act of 1834, would collect all township taxes, except the road tax, unless the Act of July 22, 1913, is to be construed so as to make the township collector the collector of all township taxes.

It is thought that such was the intention of the General Assembly. It seems improbable that the legislature would have provided such elaborate machinery for township purposes solely for the purpose of collecting the road tax, and have left other taxes to be collected in the manner provided in the earlier acts.

There is nothing in the act to indicate that the treasurer appointed by the board of supervisors is to collect any taxes, and the inference seems strong that it was the intention that the township collector should collect all township taxes.

428. Where any duplicate of taxes assessed is issued and delivered to the collector of taxes, it shall be the duty of said collector to give public notice as soon thereafter as conveniently can be done, by at least ten written or printed notices to be posted in as many public places in different parts of the township (or borough), that said duplicate has been issued and delivered to him; and all persons who shall within ninety days from the date of said notice make payment of any taxes charged against them in said duplicate, shall be entitled to a reduction of five per centum from the amount thereof; and all persons who shall fail to make payment of any taxes charged against them in said duplicate for six months after notice given as aforesaid, shall be charged five per centum additional on the taxes charged against them, which shall be added thereto by said collector of taxes and collected by him.

Sec. 1, Act of May 1, 1909, P. L. 305, amending Section 7, Act of June 25, 1885, P. L. 187.

If upon appeal to the court of common pleas upon the valuation fixed by the county commissioners in the year of the triennial assessment of property, a decision reducing the valuation be rendered by the court within six months from the date of the public notice, directed by this act to be given by the tax collector, the five per cent. penalty imposed by the act for nonpayment must be added and paid unless the amount of tax due upon the valuation fixed by the court be paid within six months from the date of the public notice, although an application for rehearing be made to the court.

*The Lehigh Coal and Navigation Co. v. Gornley*, 21 Pa. C. C. 636.

This section seems supplied by Section 14 of the Act of July 22, 1913, P. L. 915, *supra* Section 392, so far as it provides for the amount and



date of allowance, of rebates and the imposition of penalties in second class townships.

It is a debatable question whether this amendment supplies Section 15 of the Act of April 28, 1899, P. L. 104, supra Section 366, and the Act of June 4, 1901, P. L. 361, supra Section 374.

In *Kemmerer v. Foster Twp.*, 120 Pa. 153, it was held that the payment of road taxes within "sixty days" after posting notices under this section does not entitle to an abatement of five per centum on the amount thereof.

Quaere: Whether the abolition of the right to work out taxes would not change this interpretation.

429. From and after the passage of this act, the county commissioners in all counties where the county treasurer collects taxes shall, on petition of at least five hundred taxable inhabitants of said county, have power and authority to change the date or dates at which a reduction for prompt payment shall cease, and the various provisions of the act under which the county treasurer collects the taxes shall go into effect.

Sec. 1, Act of June 30, 1885, P. L. 204.

This act relates to those counties only in which the county treasurer collects taxes and while it is general in its terms it is undoubtedly local in its operation.

430. The county commissioners shall fix and determine and give due notice thereof to the county treasurer of the various dates fixed, on or before July first of each year in which a change is made, and such decision and notice shall remain in force from year to year, until it shall again be changed as is hereinbefore provided for in this act.

Sec. 2, Act of June 30, 1885, P. L. 204.

431. The collector of taxes shall provide an appropriate book the cost of which shall be allowed to him in the settlement of his accounts, in which he shall enter in alphabetical order the names of all persons charged with taxes in the duplicates aforesaid and showing the amount of such tax charged against each person, which book shall be at all times open to the inspection of each taxpayer, and shall be delivered by the collector of taxes at the expiration of his term to his successor in office.

Sec. 6, Act of June 25, 1885, P. L. 187.

432. Tax collectors of townships (and boroughs) of the Commonwealth shall furnish each person, on the payment of taxes, with a numbered receipt setting out date, name of taxpayer, amount of tax and district in which taxpayer is assessed, from a book to be furnished by the county commissioners containing a stub, that on the stub a memoranda shall be made in ink of the number of the receipt, the



date, name of taxpayer, amount of tax and district in which taxpayer is assessed.

Sec. 1, Act of June 25, 1895, P. L. 296.

433. The collector of taxes shall, in person or by some person duly authorized, be in attendance for the purpose of receiving and receipting for taxes on Thursday, Friday and Saturday of each week during the last two weeks of said sixty days, between the hours of two o'clock and six o'clock in the afternoon, at his residence, or some other place in the proper township (or borough) to be designated by him in the notice aforesaid.

Sec. 8, Act of June 25, 1885, P. L. 187.

In amending Section One of this act the Act of May 1, 1909, P. L. 305, supra Section 428, overlooked this section.

In order to make it harmonize with the provisions of the above amendment and also with the provisions of Section 15 of the Act of April 28, 1899, P. L. 104, supra Section 366, the above section should require the collector to sit on the said days *during the last two weeks of the period in which a discount is allowed*.

As before stated it is doubtful whether Section 15 of the Act of April 28, 1899, P. L. 104, is in force. See note on Section 428, supra.

434. The tenant or tenants, or other persons residing on lands, owned by persons not residing in the township, his, her, or their goods shall be liable to be levied on in manner aforesaid, for the payment of road taxes; and where any tenant or tenants shall have taken, or hereafter may take a lease of lands or tenements for one or more years, and of which the tenant shall be in possession at the time of assessing or levying the tax for public roads and highways, and shall pay the rate hereby imposed on the said lands or tenements so leased, in such case it shall be lawful for the tenant or tenants to deduct the tax out of the rent due, or to become due, or to recover the same from the owner or owners, by action of debt, with costs of suit: Provided, however, that nothing herein contained shall be so construed as to impair or make void any contract between landlord and tenant respecting the payment of the road tax.

Sec. 8, Act of April 6, 1802, P. L. 178.

This section applies only to road taxes. For complete legislation on the subject see also infra Sections 435 and 436 and notes.

435. Every tenant who may or shall occupy or possess any lands or tenements, shall be liable to pay all the taxes, which during said occupancy or possession may thereon become due and payable; and having so paid such taxes, or any part thereof, it shall be lawful for him, by action of debt or otherwise, to recover said taxes from his landlord, or, at his election, to defalcate the amount thereof in the payment of the rent due to such landlord, unless such defalca-

tion or recovery would impair any contract or agreement between them previously made.

Sec. 6, Act of April 3, 1804, P. L. 517.

This section is partly repealed by Section 46 of the Act of April 15, 1834, P. L. 509, infra Section 436.

436. The goods and chattels of any person occupying any real estate, shall be liable to distress and sale, for the non-payment of any taxes assessed upon such real estate, during his possession or occupancy and remaining unpaid in like manner, as if they were the goods and chattels of the owner of such real estate.

Sec. 46, Act of April 15, 1834, P. L. 509.

In construing this section the court in *Smeich v. County of York*, 68 Pa. 439, says:

"The 46th Section of the Act of 15th April, 1834, was taken, we are informed by the revisers of the code, from the 6th Section of the Act of 1804 and the 8th Section of the Act of 1802. \* \* \* \* It is evident that the revisers rejected the features of the Acts of 1802 and 1804 which appeared to confine the liability to the goods of tenants only holding by lease and extended it to the goods of the persons occupying any real estate. But as this would comprehend an alienee or other person coming in under a conveyance long after the taxes were laid, the revisers adopted the feature of the 8th Section of the Act of 1802 which expressly confines the liability to the person in possession at the time of assessing or levying the tax for public roads and highways. Hence the provision in the Act of 1834 is that the goods of the occupier shall be liable for the non-payment of any taxes assessed upon such real estate during his possession or occupancy and remaining unpaid. The section is concisely written, and clearly expressed and has but one meaning."

437. From and after the passage of this act all corporations, associations, companies, firms or individuals employing persons who are not citizens of the United States, shall, upon the receipt of a written notice from the tax collector of the (county or) district in which such taxes were assessed, containing the name or names of the taxable or taxables and the amounts respectively due, deduct from the wages or earnings of such employe or employes a sum sufficient to pay the respective amounts of taxes assessed against each of such alien employes, and pay the same to the collectors of the district in which said aliens are employed within sixty days after said notice shall have been given.

Sec. 1, Act of June 7, 1897, P. L. 135.

438. Any corporation, association, company, firm or individual failing to comply with the provisions of this act shall forfeit and pay the sum of double the amount of the tax for each and every taxable whose taxes are not withheld and paid over as herein directed, to be recovered by action of assumpsit as debts of like amount are now by law recoverable, and when collected shall be paid into the treasury

of the county in which such alien labor is or was employed for the use of such county.

Sec. 2, Act of June 7, 1897, P. L. 135.

439. The collector of taxes shall collect the taxes charged in said duplicates, and pay over the same to the respective treasurers or authorities entitled thereto, after deducting his commission for the collection thereof. Such commission shall be fixed by the authorities of the (respective boroughs or) townships, and shall not exceed five per centum of the amount collected. All taxes collected within the ninety days, as provided in this act, shall be paid over, as aforesaid, within fifteen days after the expiration of said ninety days; and all taxes thereafter collected during his term of office shall be paid over, as aforesaid, at regular intervals of one month; and a complete settlement of all taxes collected shall be made by the collector of taxes, with the respective treasurers or authorities entitled, thereto, not later than three months after the expiration of his term of office.

Sec. 1, Act of May 21, 1913, P. L. 284.

This Act amends Section 9 of the Act of June 25, 1885, P. L. 187, as amended by the Act of June 2, 1891, P. L. 175.

As to the rate of commission allowed to the collector of taxes see also Section 428, *supra*, and note.

As to the time during which moneys are required to be paid over to the authorities entitled thereto see *infra* Section 461 and note.

440. From and after the passage of this act, it shall be lawful for the several county treasurers in this Commonwealth, hereafter elected or appointed, to charge and deduct from (school,) road and all other municipal taxes, collected and paid over to the proper authorities by them, the same rate per centum as compensation as hereafter may be legally allowed them for the collection and disbursement of county taxes: Provided, That such rate shall in no case exceed five per centum of the whole amount so collected and paid over.

Sec. 1, Act of May 23, 1887, P. L. 178.

The phrase "municipal taxes" seems to comprehend township taxes under the reasoning in *Dreese v. Freed*, 42 Pa. C. C. 242.

441. The (commissioners of the proper county, and the) supervisors (and overseers of the poor) of the proper township, (as the case may be,) shall at all times make abatements or exonerations for mistakes, indigent persons, unseated lands, etc., as to them shall appear just and reasonable, and the commissioners shall direct their clerk to enter in a book or books to be kept for that purpose the names of all persons abated or exonerated, together with the reason why, the amount and date, when made, and give to the collector a certificate directed to the county treasurer, stating the nature of the tax, and the amount exonerated, in order to make settlement accordingly,

and the same course shall be pursued by the supervisors (and overseers of the poor) with respect to exonerations of township rates and levies.

Sec. 48, Act of April 15, 1834, P. L. 509.

442. Exonerations may be made by the authorities and in the same manner as heretofore.

Sec. 10, Act of June 25, 1885, P. L. 187.

443. It shall be the duty of supervisors and collectors of road taxes, and of all collectors of any other taxes whatever, to make return to the county commissioners of any exonerations claimed by them, on or before the first day of (January) in each year; and it shall not be lawful for the said county commissioners to grant any exonerations after that time, nor for the county treasurer to sell any lands which shall have been returned and taxes exonerated, after the said time.

Sec. 3, Act of April 21, 1856, P. L. 477.

This section was not repealed by the Act of June 25, 1885, P. L. 187. See *Bigger v. Scouton*, 30 Pa. Supt. Ct. 503.

The time for making returns for exonerations has been changed to the first day of February by the Act of February 23, 1858, P. L. 45, *infra* Section 475.

This Act of February 23, 1858, was repealed as to Venango County by Section 4 of the Act of May 11, 1871, P. L. 750, which fixed the date of returns in that county on or before the 31st day of December.

444. Any person liable to road tax who shall transplant to the side of the public highway on his own premises any fruit, shade or forest trees, of suitable size shall be allowed by the supervisors of roads, or boards of supervisors of roads, where roads run through or adjoin cultivated fields, in abatement of his road tax, one dollar for every two trees set out; but no row of elms shall be placed nearer than seventy feet; no row of maples or other forest trees nearer than fifty feet, except locust and Carolina poplar, which may be set thirty feet apart, and except fruit trees, which may be set forty feet apart; and no allowance as before mentioned shall be made unless such trees shall have been set out the year previous to the demand for such abatement of tax, and are living and well protected from domestic animals at the time of such demand.

Sec. 1, Act of July 2, 1901, P. L. 610.

445. Any fruit, shade or forest trees growing naturally by the side of the public highway, where said public highway runs through cultivated lands, shall be allowed for in the same manner and on the same conditions as in the preceding section.

Sec. 2, Act of July 2, 1901, P. L. 610.



446. Any trees transplanted by the side of the public highway as aforesaid, in the place of trees that have died, shall be allowed for in the same manner and on the same conditions as in the first section of this act.

Sec. 3, Act of July 2, 1901, P. L. 610.

447. (Any person who shall cut down, kill or injure any living tree planted or growing naturally as aforesaid, or who negligently or carelessly suffers a horse or other domestic animal, driven by or for him to injure any of the trees hereinbefore mentioned, upon conviction thereof shall be subject to a penalty of not less than one dollar, nor more than five dollars with costs of suit, for each and every tree so cut down, killed, removed or injured: Provided, that if the defendant or defendants neglect or refuse to pay at once the penalty so imposed and costs, or shall not enter sufficient bail for the payment of the same within ten days, he or they shall be committed to the common jail of the county in which the offence was committed, for a period of not less than one day for each dollar of penalty imposed and costs: Provided, however, That) the owner of the land upon which the trees are growing and upon which said abatement has been granted, may remove such trees, on condition that he will immediately plant and maintain another three or trees, in the place or places of those removed by him, or refund to township said abatement, originally allowed for said tree or trees.

Sec. 5, Act of July 2, 1901, P. L. 610.

448. All moneys collected as a penalty in accordance with section five of this act shall be paid to the supervisors of roads or boards of supervisors of roads and form part of the road fund of the township in which the offence was committed.

Sec. 6, Act of July 2, 1901, P. L. 610.

449. No person shall be allowed an abatement, as aforesaid, of more than one-quarter of his said annual road tax.

Sec. 4, Act of July 2, 1901, P. L. 610.

450. It shall be the duty of the supervisor of roads or the boards of supervisors of roads, to keep a permanent record, in a book specially prepared for that purpose, and which book shall be the property of the township, of all trees upon which the said abatement, as hereinbefore mentioned, has been granted; and when any tree or trees have been removed, with or without the consent of the supervisors of roads or boards of supervisors of roads, the date thereof shall be distinctly entered in the said book.

Sec. 7, Act of July 2, 1901, P. L. 610

450a. In consideration of the public benefit to be derived from the retention of forest or timber trees, the owner or owners of land in this Commonwealth, having on it forest or timber trees averaging not fewer than fifty trees to the acre, each of said trees to measure at least eight inches in diameter, at a height six feet above the surface of the ground, with no portion of the said land absolutely cleared of the said trees, shall, upon filing with the assessor of their respective townships (or districts,) annually, an affidavit made by said owner or owners, or by some one in his, her or their behalf, upon blanks to be provided by the county commissioners of the respective counties, and by them to be furnished to the assessors for the purposes herein intended, setting forth the number of acres of timber land within the requirements of this act, be entitled to receive annually, during the period that the said trees are maintained in good condition upon the said land, a rebate equal to eighty per centum of all taxes, local and county, annually assessed and paid upon said lands, or so much of the eighty per centum as shall not exceed in all the sum of forty-five cents per acre; the said rebate to be deducted from said taxes pro-rata, and receipted for by the respective tax collectors or county treasurer: Provided, however, that no one property owner shall be entitled to receive said rebate on more than fifty acres.

Sec. 1, Act of April 8, 1905, P. L. 118.

451. It shall be the duty of the assessor, when such affidavit is filed with him, to record upon his assessment-book the amount of timber land upon which the owner or owners may be entitled to receive the rebate, together with the value at which such timber land shall be assessed, for the purpose of furnishing the necessary information to those who shall prepare the respective tax duplicates, and upon which duplicates the amount of the said rebate shall be stated. No additional compensation shall be allowed any assessor for performing the duties required by this act. It shall likewise be the duty of each assessor, after receiving such affidavit, to file the same, at the time of making his return, with the county commissioners of the respective counties.

Sec. 2, Act of April 8, 1905, P. L. 118.

This act was held unconstitutional in *Tubbs v. Tioga Co.*, 16 D. R. 318, as being in contravention of Section 1, Article IX of the Constitution.

See also *Christley v. Butler Co.*, 37 Pa. Super. Ct. 32.

452. In consideration of the public benefit to be derived from the planting and cultivation of forest or timber trees, the owner or owners of any land or lands in this Commonwealth who shall plant the same with forest or timber-trees, in number not less than three hundred to the acre, shall have a rebate in his or her or its taxes, to the amount of eighty per centum thereof, thereon, for a period of thirty-five years:

Provided, that such rebate shall not amount to more than forty-five cents per acre; said period of exemption to be counted from the time the said land or lands shall have been planted with forest or timber-trees, as aforesaid; or from the time it may have been necessary to re-plant the same, as aforesaid, by reason of destruction from fire; and the rebate herein provided for shall be calculated and allowed by the tax collector.

Sec. 1, Act of April 20, 1905, P. L. 246.

453. The owner or owners of any land or lands in this Commonwealth who shall maintain upon said land or lands sprout forest or timber-trees, in number not less than three hundred to the acre, shall be entitled to and receive the rebate of taxes as provided in section one; said period of exemption to be counted from the time the said land or lands shall have been so maintained with sprout forest or timber-trees or from the time that said sprout forest or timber-trees may have been destroyed by fire.

Sec. 2, Act of April 20, 1905, P. L. 246.

454. Upon any tract or tracts selected as a forest reservation, in accordance with sections numbers one and two of this act, which contain fifty or less original forest-trees on each acre, the owner or owners may plant a sufficient number of trees which shall make up not less than the required three hundred trees to the acre, and the same shall become subject to this act, in accordance with sections numbers one and two.

Sec. 3, Act of April 20, 1905, P. L. 246.

455. No land owner or owners shall receive the benefit of this act who shall permit cattle, horses, sheep, hogs, or goats to pasture upon such reservation or reservations, until at least two hundred trees upon each acre of said tract are four or more inches in diameter two feet from the surface of the land.

Sec. 4, Act of April 20, 1905, P. L. 246.

456. It shall be the duty of the township assessor of taxes to personally examine the various forest reservations, and, if found necessary, to demand of the owner or owners, or their agents thereof, to subscribe under oath that the land is maintained under the conditions of this act; and to return to the county commissioner the number of acres so maintained, and the time from which the land has been so maintained; and also to make a duplicate return of the same data to the State Forestry Commission.

Sec. 5, Act of April 20, 1905, P. L. 246.

457. Any assessor who shall knowingly and wilfully accept and make fraudulent return, or any owner or agent who shall knowingly and wilfully make any fraudulent return to the assessor, shall be liable to a fine of not more than five hundred dollars, or imprisonment of not more than one year, or either or both, at the discretion of the court: Provided, however, that the provisions of this act shall not be construed so as to exempt from taxation more than five hundred acres, owned by any one person or body corporate, or limited copartnership or association.

Sec. 6, Act of April 20, 1905, P. L. 246.

This act has been held unconstitutional in *Christley v. Butler Co.*, 37 Pa. Superior Court 32, as being in contravention to Section 1, of Article IX of the Constitution.

458. If any person shall neglect or refuse to make payment of the sum charged to him for township rates and levies, it shall be lawful for the collector thereof, having first obtained a warrant, under the hand and seal of any justice of the peace of the county, to levy the same by distress and sale of the goods and chattels of such delinquent, giving ten days public notice of such sale, by written or printed advertisements; and in case goods and chattels sufficient to satisfy the same with the costs, cannot be found, such collector shall be authorized to take the body of such delinquent and convey him to the jail of the proper county, there to remain until the amount so charged, together with the costs, shall be paid or secured to be paid, or until he shall be otherwise discharged by due course of law.

Sec. 35, Act of April 15, 1834, P. L. 509.

For collectors' remedy after the expiration of his warrant, see *infra* Section 472.

459. The warrant authorized by the thirty-fifth section of the act to which this act is a supplement, may be issued to the supervisors, or to any person authorized by them to collect township rates and levies, in any township where no treasurer has been elected or appointed; and the person or persons to whom such warrant is directed shall proceed to execute the same in the manner provided in said section.

Sec. 1, Act of March 29, 1860, P. L. 337.

This act supplements the Act of April 15, 1834, P. L. 509.

460. All persons who are authorized under existing laws to collect (either) road (or poor) taxes in the several (boroughs and) townships of this Commonwealth, are hereby authorized and empowered, in addition to the remedies heretofore provided, to collect (either) road (or poor) tax by levy and sale in the same manner as school and county taxes are now by law collected: Provided, however, that



nothing herein contained shall be construed to abridge any right secured under existing law to any person to work out any portion of his road tax.

Sec. 1, Act of May 22, 1895, P. L. 111.

The general reference is to Sections 20 and 21 of the Act of April 15, 1834, P. L. 509. (See *Rice v. Burns*, 9 Pa. Super. Ct. 58). These sections are as follows:

The commissioners of each county shall issue their warrants with the duplicates aforesaid, to the respective collectors of county rates and levies, therein authorizing and requiring them to demand and receive from every person in such duplicate named, the sum wherewith such person stands charged.

Sec. 20, Act of April 15, 1834, P. L. 509.

If any person shall neglect or refuse to make payment of the amount due by him for such tax within thirty days from the time of demand so made, it shall be the duty of the collector aforesaid to levy such amount by distress and sale of the goods and chattels of such delinquent, giving ten days' public notice of such sale by written or printed advertisements, and in case goods and chattels sufficient to satisfy the same with the costs cannot be found, such collector shall be authorized to take the body of such delinquent and convey him to the jail of the proper county there to remain until the amount of such tax together with the costs shall be paid or secured to be paid or until he shall be otherwise discharged by due course of law.

Sec. 21, Act of April 15, 1834, P. L. 509.

Under the Act of July 22, 1915, P. L. 915, all taxes must now be paid in cash.

461. The tax collectors of the several (boroughs and) townships of this Commonwealth, elected pursuant to the provisions of an act of Assembly, entitled "An act to authorize the election of tax collectors for the term of three years in the several boroughs and townships of this Commonwealth," approved the sixth day of June, Anno Domini one thousand eight hundred and ninety-three, and all other tax collectors of (State, county,) township road, (school and borough) taxes, elected or appointed by or under existing law, shall hereafter make monthly returns in writing to the several persons to whom the tax collected by said tax collector is by law required to be paid, showing the amounts collected by them during the preceding month, and the amount of uncollected taxes upon their respective duplicates, or exhibit the duplicate showing the said uncollected taxes, at the close of each month during their respective terms of office, and shall pay over to the said persons to whom by law the said taxes are made payable, the amounts so collected by such tax collectors monthly, less the commission or fees to which they are by law entitled for the collection of the same: (Provided, that in the case of collectors of borough taxes they shall also be required to file with the councils of their respective boroughs duplicate returns for the taxes collected monthly

by them as aforesaid, and duplicate receipts from the respective borough treasurers for the amount so paid over to them.)

Sec. 1, Act of July 9, 1897, P. L. 242.

It seems this section is partly repealed by implication by the Act of May 21, 1913, P. L. 284, *supra* Section 439.

462. Any tax collector failing to comply with the requirements of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of not exceeding one hundred dollars.

Sec. 2, Act of July 9, 1897, P. L. 242.

See note on Section One of this act in Section 461, *supra*.

463. It shall not be lawful for any collector to institute a suit, for the recovery of any tax in any court of this State or before any alderman or justice of the peace of this State, and no such court, alderman or justice shall issue process for such purposes.

Sec. 50, Act of April 15, 1834, P. L. 509.

This means during the life of the tax warrant. Upon the expiration of the warrant the collector has a right of action under the Act of April 11, 1848, P. L. 517, *infra* Section 472. See *Com. v. Mahon*, 12 P. S. C. 616.

464. Return of taxes assessed by the authorities of any (county, school district, poor district, borough, incorporated town, or) township, against seated lands, shall be made whenever personal property cannot be found thereon sufficient to pay such taxes, to the commissioners of the county, on or before the first day of February succeeding the date when the taxes were assessed. Whenever any such taxes are not paid within two years after the date of the assessment, such seated lands shall be advertised and sold by the county treasurer, at the time and in the manner, and with the same conditions and effect, as unseated lands.

Sec. 1, Act of June 1, 1915, P. L. 660.

This act amends Section One of the Act of May 21, 1913, P. L. 285.

465. From and after the passage of this act when seated lands shall be returned for non-payment of taxes the collector of taxes or other person making such return shall add to the amount of each item of tax for which the same is returned, five per centum thereof, which shall be recovered or collected along with said taxes, as the same are now recovered or collected by law and when so recovered and collected the said five per centum shall be paid to the collector of taxes or other person making such return.

Sec. 1, Act of April 19, 1901, P. L. 81.

466. It shall be lawful for any collector, with the approbation of the treasurer of the proper (county or) township, (as the case may

be), to employ a suitable person to act for him in the execution of his warrant; such collector and his surety being in all cases responsible for the acts of such deputy.

Sec. 51, Act of April 15, 1834, P. L. 509.

467. The executors or administrators of any deceased tax collector within this Commonwealth, shall have the same powers, until the end of two years from the date of the warrant, to enforce the collection of the unpaid taxes, as the collector would have, if living.

Sec. 1, Act of March 26, 1867, P. L. 45.

468. It shall be lawful for the executors or administrators of any deceased tax collector to employ a suitable person to act for them in the execution of the warrants, with all the powers possessed by the deceased collector.

Sec. 2, Act of March 26, 1867, P. L. 45.

469. The accounts of collectors of taxes shall be settled by township (or borough) auditors of the proper township (or borough) and he shall state a separate account for each different tax collected by him; (but collectors of county and state taxes shall settle with the county commissioners as heretofore.)

Sec. 11, Act of June 25, 1885, P. L. 187.

Until the accounts of township tax collectors are settled by the township auditors and an amount ascertained by such auditors to be due by such collectors, a proceeding at law upon the official bond is premature and unauthorized.

*Swatara Twp. School District's Appeal, 1 Pa. Super. Ct. 502.*

470. If any collector who shall have taken upon himself the duties of his office shall fail to perform such duties, he shall forfeit a sum not exceeding forty dollars, to be recovered by the (county or) township, (as the case may be,) as debts of like amount are recoverable: Provided, that the sureties of a collector shall, notwithstanding such proceedings against him, remain liable according to the condition of their bond.

Sec. 41, Act of April 15, 1834, P. L. 509.

471. If any person charged with the collection, safe-keeping or transfer of any (State, county,) township, (school, city, borough or municipal) taxes, under any law or laws of this Commonwealth, shall convert or appropriate the moneys so collected, or any part thereof, to his own use in any way whatever, or shall use by way of investment in any kind of property or merchandise any portion of the money so collected by him from such tax or taxes, and shall prove a defaulter or fail to pay over the same or any part thereof at the time or times, place or places, required by law, and to the person or per-

sons legally authorized to demand and receive the same, every such act shall be deemed and adjudged to be an embezzlement of so much of said money as shall be thus taken, converted, appropriated, embezzled, invested, used or unaccounted for, which is hereby declared a misdemeanor; and every such tax collector and every person or persons whomsoever aiding or abetting, or being in any way accessory to such act, and, being thereof convicted, shall be sentenced to an imprisonment not exceeding five years, or to pay a fine not exceeding five thousand dollars, or both at the discretion of the court.

Sec. 1, Act of June 3, 1885, P. L. 72.

472. The provisions of the fiftieth section of an act of the General Assembly of this Commonwealth, entitled "An act relating to county rates and levies, and township rates and levies," passed April fifteenth, one thousand eight hundred and thirty-four, (P. L. 509), shall not be so construed as to prohibit a collector of taxes from instituting suit or suits for the recovery of taxes due and unpaid, at any time after the expiration of his warrant; but in all cases where taxes are due and unpaid to any collector, after the expiration of his warrant, when such collector, has not been legally exonerated therefrom, every such collector, or person, his executors, administrators, or any of them, is hereby declared to have full right and power to sue for and recover the same, with interest thereon, after the expiration of his warrant as aforesaid, from all and every person and persons, bodies politic and corporate, owing the same, as other debts of like amount are now by law recoverable.

Sec. 3, Act of April 11, 1848, P. L. 517.

Section fifty of the Act of April 15, 1834, P. L. 509, herein referred to appears in Section 463, *supra*.

473. Taxes charged upon unseated lands shall not be collected by the collectors of taxes, but shall be certified and returned by the several authorities levying the same to the county commissioners to be collected as heretofore.

Sec. 12, Act of June 25, 1885, P. L. 187.

474. Assessors, supervisors and collectors of road (and school) taxes, are hereby required to make their returns for the collection of all taxes on unseated lands on or before the first day of January in each and every year, and if not so made by said assessors and collectors, such returns shall not thereafter be received, nor shall such taxes be a lien on real estate: Provided, that this section shall not be constructed to exempt any such assessors and collectors and their bail from liability for not making their returns according to law.

Sec. 2, Act of April 21, 1856, P. L. 477.

The time for making these returns was changed to the first day of February by the Act of February 23, 1858, P. L. 45, see *infra* Section 475.



475. The returns for the collection of taxes on unseated lands, and for exonerations required to be made in pursuance of the several provisions of an act of assembly, approved the twenty-third day of April, one thousand eight hundred and fifty-six, entitled "An act relative to the sale of lands for the non-payment of taxes," shall be good and valid if made on or before the first day of February in each and every year, instead of the first day of January, as required by that act: Provided, however, that the returns for the years eighteen hundred and fifty-six and eighteen hundred and fifty-seven, shall be good and valid if made within thirty days after the passage of this act.

Sec. 1, Act of February 23, 1858, P. L. 45, supplementing the Act of April 21, 1856, P. L. 477.

This act is repealed so far as it relates to Venango County by Section 4 of the Act of May 11, 1871, P. L. 750, and the date of the returns in that county was fixed on or before the 31st day of December.

476. After June first, Anno Domini one thousand eight hundred and eighty-eight, all taxes levied upon unseated lands, within the counties of this Commonwealth, shall be paid by the owner or owners of such unseated lands within the year for which the same are levied; and in case of the refusal or failure of any person or persons, companies or bodies corporate, owner or owners of such unseated lands to pay the taxes so levied within the year for which the same were levied and collectible, then interest at the rate of six per centum per annum is to be charged upon the amount of said taxes, or any part thereof, remaining due and unpaid from and after the first day of the year following that for which said taxes were levied until the same has been paid in full, or the land sold as now provided by law for the sale of unseated lands: Provided, no interest shall be charged upon taxes levied for the years one thousand eight hundred and eighty-six and one thousand eight hundred and eighty-seven.

Sec. 1, Act of June 6, 1887, P. L. 363.

477. Any board of commissioners may direct the treasurer of the proper county to receive in advance, for any term not exceeding six years, a sum which in their estimation shall be equal to the taxes that ought to be imposed on any such land or lands, during the period for which they shall so compound with the owner as aforesaid.

Sec. 8, Act of March 13, 1815, P. L. 177.

478. Any joint tenant in common or coparcener of unseated lands in this Commonwealth, shall have the right to pay his, her or their proportionate part of the amount of taxes due thereon at any time before the sale thereof by the county treasurer; and it shall be the duty of the said treasurer to receive and receipt for the same; and he may sell the residue of the shares or interest in said lands on which

the taxes remain unpaid, any law, usage or custom heretofore to the contrary notwithstanding.

Sec. 31, Act of April 25, 1850, P. L. 569.

479. All receipts for taxes on unseated lands given by the proper officers of any county of this Commonwealth, which shall have been duly acknowledged by said officers before any judge, or justice of the peace of the proper county, may be recorded in the office for the recording of deeds in the county where the lands lie, and the records thereof, or the duly certified copies of said records, shall be evidence in all cases where the original receipts would be evidence.

Sec. 1, Act of March 9, 1847, P. L. 279.

480. It shall be the duty of the proper officers aforesaid, of the counties aforesaid, to make the due acknowledgement in manner aforesaid, upon being required so to do, at the cost of the parties applying therefor: Provided, that such application shall be made within thirty days from the date of the receipts aforesaid.

Sec. 2, Act of March 9, 1847, P. L. 279.

481. In all cases where taxes upon unseated lands are paid to the county treasurer by the owners or claimants of said lands, it shall be the duty of such treasurer to enter such payments upon the proper book kept by him for the purpose, and if requested by the person paying such taxes, give a certified copy, under the official seal of said county treasurer, of the entries in such book, specifying the name of the person or persons as whose property such lands are taxed, the location of such lands, the number of the warrant, and the number of acres or other description thereof, the kind and amount of taxes assessed thereon and so paid, the date of payment of the same, and the name of the person or persons paying the said taxes and for whose use the same are paid: Provided, that the said treasurer shall be entitled to receive therefor, from the person demanding the said receipt or certified copy, the sum of twenty-five cents.

Sec. 1, Act of April 30, 1879, P. L. 34.

482. In order that the county treasurers may be enabled to carry out the provisions of this act, the county commissioners of the proper county are hereby required to procure and furnish for said treasurers the proper book or books, together with an official seal of said office, for their respective counties: such book or books and seal, when necessary, shall be procured on or before the first day of January, one thousand eight hundred and eighty, and all payments of taxes aforesaid after said date shall be entered therein.

Sec. 2, Act of April 30, 1879, P. L. 34.

483. If the proportion of tax assessed on unseated lands in any township or any part of it, is not paid to the supervisors, by or for the owners of said lands, within six days after the supervisors have proceeded to collect the tax from the inhabitants, it shall be the duty of the supervisors to make out a fair transcript of the amount of the tax remaining unpaid and due on the several tracts of unseated lands within their respective townships, to which transcript the supervisors shall sign their names, and they shall deliver the same to the commissioners of the county, and on the receipt of the said transcript the county commissioners shall give unto the supervisors an order on the county treasurer for the amount of the taxes remaining due on the unseated lands in their township, (which order shall be paid out of the county taxes forthwith;) and the county commissioners aforesaid, are hereby directed and required, on the receipt of the transcript aforesaid, to proceed to recover the taxes due on unseated lands for public roads and highways, in the same manner, and with the same authority as the county taxes are or shall be by law directed to be recovered, and shall cause the proceeds of the same to be paid to the county treasurer to reimburse the money paid to the supervisors of the roads and highways.

Sec. 7, Act of April 6, 1802, P. L. 178.

The part of this section in brackets is repealed by Section 1 of the Act of March 30, 1811, P. L. 189, *infra* Section 484.

484. From and after the passage of this act it shall be the duty of the commissioners of the respective counties within this Commonwealth, on receiving the transcripts of road taxes due on unseated lands, which the supervisors of the different townships are by the existing road laws required to furnish, to issue their order to the county treasurer for the amount thereof; and also immediately to transmit copies thereof to the said treasurer, who is hereby required to enter them in a book to be kept for that purpose; and it shall be the duty of the said treasurer, on receiving the said taxes or any part thereof, and not before, to pay over the amount thereof to the supervisors who shall respectively be entitled to the same: Provided, that no land shall be sold for road taxes until twelve months after the said transcripts have been delivered to the treasurers aforesaid, and notice given in the manner prescribed by the second section of an act directing the mode of selling unseated lands for taxes, passed the third day of April, one thousand eight hundred and four, (P. L. 517); provided, also, that so much of the existing road laws as requires the treasurers to pay the amount of road taxes due on unseated lands to the supervisors immediately on the orders of the commissioners being presented to them, be, and the same is hereby repealed.

Sec. 1, Act of March 30, 1811, P. L. 189.

This act supplements the Act of April 6, 1802, P. L. 178.



485. Whenever an assessment of road tax by the supervisors may be made upon land as unseated, which the assessors for the same year by error or mistake returned assessed as seated, while the same ought or might legally have been assessed as unseated, the said assessment by the supervisors shall be deemed valid and regular for all intents and purposes, notwithstanding it differs from the copy of the duplicate furnished the supervisor by the assessor, and all records of the county commissioners charging lands as unseated with arrears of taxes shall be evidence of an assessment and no clearing over by mistake shall ever be deemed sufficient to render land seated.

Sec. 21, Act of April 12, 1842, P. L. 262.

486. It shall not be lawful for any county treasurer, county commissioner or commissioners, or any collector of taxes in any township, (ward, or district) nor for any other person on his or their behalf, to receive payment, or give any receipt for the payment of any taxes that have not been duly assessed, and returns of said assessment made according to law, nor shall any such treasurer, commissioner or commissioners, or collector, or other person, on his or their behalf, receive payment or give any receipt for the payment of any taxes from the payment of which the party assessed has been exonerated according to law, unless the party so exonerated shall himself appear in his own proper person, and tender payment of the taxes from which he had been so exonerated; and it shall not be lawful for any commissioner or commissioners of any county, or for any other person on his or their behalf, to add any name or names to the duplicate return or list of taxables, made or furnished by the assessor or assistant assessor of any township, ward, or district, and if any such treasurer commissioner, commissioners, or collector, or other person on his or their behalf, shall violate any of the provisions of this section, he shall upon conviction thereof, before any court having competent jurisdiction, pay a fine of one hundred dollars for the use of the Commonwealth, and shall moreover be forthwith removed from office, and the vacancy thereby occasioned in either of said offices shall be filled or supplied as in other cases of vacancies in such office.

Part of Sec. 8, Act of May 27, 1841, P. L. 400.

The remaining provisions of this section were temporary and have expired.

487. When any local or special law in any of the townships of this Commonwealth (which provided for the laying out, opening and keeping in repair the several roads in the same, or) which provided for the levy, assessment and collection of road taxes has been or shall hereafter be repealed, then and in every such case the general road law shall apply to, govern and control the said townships, the same as



though they had never been acting under or affected by any such local or special law.

Sec. 1, Act of June 10, 1881, P. L. 105.

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#### XIV.

#### LICENSES AND LICENSE FEES.

##### (a) Provisions Relating to Both First and Second Class Townships.

488. Whenever, hereafter, any dispute shall arise between any township, (city, borough, or other municipal corporation) of this State, having authority under the law to charge a license fee against any telegraph, telephone, light, power, street passenger railway, motor traction, gas, or water company, occupying the highways of such municipality with its poles, wires, conduits, or cables, as to whether or not the amount of license fee, named in any ordinance of said municipal corporation, for the inspection and regulation of the said poles, wires, conduits, or cables, under its police power, is or is not reasonable, either party may apply, by petition, to the court of common pleas of the county where said municipal corporation is situated, to determine the said dispute. Upon the filing of said petition, setting forth the nature and character of the dispute, and the facts bearing upon the question thus raised, the said court shall issue a citation to the respondent, commanding it to appear and answer the said petition at a time named, and to abide by and obey the order of the court. Said citation and a copy of said petition shall be served upon the respondent, not less than fifteen days before the time fixed for answering. To said petition the respondent shall make answer within the time fixed, or such extension thereof as the court shall allow, specifically answering the facts set forth in said petition, and averring such other or further facts as it shall deem necessary for the proper determination of the said dispute. At any time after the return day fixed in the said citation, the said court shall, upon application of either party, fix a date for the hearing of the issue raised by said petition and answer; and thereupon shall take the evidence and decide the said dispute in the way and manner provided by law for the hearing of cases in equity.

Sec. 1, Act of July 26, 1913, P. L. 1371, amending Sec. 1, Act of April 17, 1905, P. L. 183.

A township is not a municipal corporation. See *Demster v. United Traction Co.*, 205 Pa. 70; *St. David's Church v. Sayen*, 244 Pa. 300. The Act of April 17, 1905, was held constitutional in *West Chester Borough v. Postal Telegraph Cable Co.*, 38 Super. Ct. 603, affirmed in 227 Pa. 384, and in *Pittsburgh and Allegheny Telephone Co. v. Braddock Borough*, 43 Super. Ct. 456.

489. Said court shall have power to allow any pleading to be amended, to make all necessary, general or special rules or orders for the production of evidence and to expedite the said hearing, and may hear and determine the matter ex parte if the respondent fails to answer or appear at the time fixed for the hearing.

Sec. 2, Act of April 17, 1905, P. L. 183.

490. The said court, in its decision of said dispute, shall determine the amount of annual license fees which should be paid to the said municipal corporation in order to properly compensate it for the necessary cost of the services performed, or to be performed, by it, for the inspection and regulation of the poles, wires, conduits, cables, pipes, or mains of the said telegraph, telephone, light, power, street passenger railway, motor traction, gas, or water company; and the amount thus determined shall be the maximum sum which the said municipal corporation shall be authorized to charge as license fees against such petitioning corporation.

Sec. 2, Act of July 26, 1913, P. L. 1371, amending Sec. 3, Act of April 17, 1905, P. L. 183.

491. Either party shall have the right of appeal from the order of the court, to the Supreme or Superior Court, as in other cases.

Sec. 4, Act of April 17, 1905, P. L. 183.

492. The amount of such annual license fees, as determined by the final order of the court, shall continue until altered by the court itself; but no application shall be made for that purpose oftener than once in every two years.

Sec. 5, Act of April 17, 1905, P. L. 183.

493. Nothing in this act contained shall be so construed as to alter or affect the duty of said telegraph, telephone, light, power, street passenger railway, motor traction, gas, or water company to properly erect, or construct and maintain, its poles, wires, conduits, cables, pipes, or mains, or to relieve it from liability for negligence in regard thereto, either primarily to the person injured or secondarily to the municipal corporation, if judgment is recovered against it by the person injured by reason of such negligence.

Sec. 3, Act of July 26, 1913, P. L. 1371, amending Sec. 6, Act of April 17, 1905, P. L. 183.

494. It shall be unlawful for any person, firm or corporation, without a license as provided in this act, to conduct any business the whole or greater part of which shall consist of the sale of goods which shall be held forth or represented or advertised to be goods of, or obtained from, the estate of any bankrupt; or goods of, or ob-

tained from, an assignee, or a person, firm, or corporations about to go out of business; or goods that have been damaged in any way: Providing, That nothing in this act shall prohibit the sale of any such goods by any assignee, trustee, receiver, or other officer appointed by any court of this Commonwealth or of the United States, acting for the estate of any such bankrupt, or other person, firm or corporation, within the limits of the (city, borough or) township, wherein the said person, firm or corporation conducted said business, or had the goods immediately before the appointment of such assignee, trustee, receiver or other officer: And provided further, Nothing in this act shall prohibit the sale of any goods, damaged in any way, if the same are sold within the limits of the (city, borough, incorporated town, or) township wherein said owner conducted business, or had the said goods at the time the said goods become damaged.

Sec. 1, Act of May 20, 1913, P. L. 227.

This act is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

495. A license to conduct business under this act shall be issued by the treasurer of the proper (city, borough, or) township wherein the said business is conducted. The fees for (cities, incorporated towns, or boroughs shall be fixed by ordinance of the proper city, incorporated town, or borough. In cities, incorporated towns, and boroughs the license fee shall not be less than one hundred dollars (\$100), nor more than two hundred dollars (\$200), for each calendar month, or fraction thereof.) In townships the license fee shall be twenty-five dollars (\$25) for each calendar month, or fraction thereof, and shall be for the use of the school fund of the township. The license shall be renewed monthly during the time such person, firm, or corporation shall conduct such business. This license shall be in addition to all license fees and taxes imposed by this Commonwealth and the proper (city, borough, incorporated town, or) township.

Sec. 2, Act of May 20, 1913, P. L. 227.

This act is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

496. Any person, firm, or corporation that shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay, for each day such business shall be conducted without a license, a fine of not more than two hundred dollars (\$200).

Sec. 3, Act of May 20, 1913, P. L. 227.

This act is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.



497. From and after the passage of this act it shall be unlawful for any (city, borough or) municipality, to levy any license or mercantile tax upon persons taking orders for merchandise by sample, from dealers, for individuals or companies who pay a license or mercantile tax at their chief places of business. It shall also be unlawful for any (city, borough or) municipality to collect such license or mercantile tax hereafter levied by virtue of any ordinance of any (city, borough or) municipality: Provided, That nothing in this act shall authorize such person to sell by retail, to others than dealers or merchants.

Sec. 1, Act of May 17, 1883, P. L. 31.

In view of the decisions in *Dare v. Co. Com.*, 23 Pa. C. C. 646, and *Dreese v. Freed*, 42 Pa. C. C. 242, that the term "municipality" includes a township, this act has been included. This act was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

498. From and after the passage of this act, it shall be unlawful for any (city, county, or) municipality to impose or collect any license fee upon insurance companies or their agents, or insurance brokers, authorized to transact business under an act approved the first day of June, nineteen hundred and eleven, (P. L. 607), entitled "An act to establish an Insurance Department; authorizing the appointment of an Insurance Commissioner, and prescribing his powers and duties; also providing for the licensing, examination, regulation, and dissolution of insurance and surety companies and associations, and for the licensing and regulation of insurance agents and insurance brokers; also providing for the collection of fees, and prescribing penalties for the violation of any of the provisions of this act, and repealing all existing acts."

Sec. 1, Act of May 3, 1915, P. L. 217.

This act has been incorporated pursuant to the decisions in *Dare v. Co. Com.*, 23 Pa. C. C. 646, and *Dreese v. Freed*, 42 Pa. C. C. 242, that the term "municipality" includes a township.

#### (b) Provisions Relating Exclusively to First Class Townships.

499. The board of township commissioners, of every township of the first class within this Commonwealth, shall have power to enact ordinances requiring licenses to be taken out, annually, for all stages, hacks, carriages, and other vehicles, used for carrying persons or property for hire, within the township, and fixing a reasonable annual charge for such licenses. Also to regulate or limit the rate of fares to be charged persons using said vehicles.

Sec. 1, Act of April 11, 1903, P. L. 164.

500. The said ordinances shall be enforced as other township ordinances are by law enforced, and the license charges shall be



ollected as other license charges, fines and penalties are now authorized by law to be collected.

Sec. 2, Act of April 11, 1903, P. L. 164.

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## XV.

### TOWNSHIP OFFICERS.

#### (a) Provisions Relating to Both First and Second Class Townships.

501. No person shall be eligible to any township office unless he be an elector of the township for which he shall be chosen.

Sec. 84, Act of April 15, 1834, P. L. 537.

502. No person hereafter elected shall be capable of holding and exercising the office of (school director, constable,) pathmaster, or commissioner of roads, and that of township (or borough) auditor.

Sec. 1, Act of May 18, 1876, P. L. 179.

This act is a supplement to the Act of May 15, 1874, P. L. 186. It was repealed so far as inconsistent by the Act of May 18, 1911, P. L. 309, (School Code).

503. If any person elected or appointed to any township office, (excepting that of constable,) and duly notified thereof, shall neglect or refuse to serve in such office, he shall forfeit and pay the sum of twenty dollars: Provided, That no person shall be required to serve in any such office more than three years in twelve years.

Sec. 85, Act of April 15, 1834, P. L. 537.

504. Every person elected or appointed to any township office shall, before entering upon the duties of his office, take and subscribe an oath or affirmation, before some person having authority to administer oaths, to support the constitution of the United States and that of this commonwealth, and perform the duties of his office with fidelity; a copy of which oath or affirmation certified by the person by whom the same shall be administered, shall within ten days thereafter be filed with the town-clerk, if there be one in such township.

Sec. 86, Act of April 15, 1834, P. L. 537.

The office of town-clerk was abolished by the Act of June 14, 1911, P. L. 942, and the duties of that officer were conferred on the secretary. Supervisors before they have been sworn in or given bond, are officers de facto, and may bind the township, within the month allowed by the act for entering into bond: *Greey Township v. Jamison*, 55 Pa. 468.

505. If any township officer shall refuse or persistently neglect to perform his duties as provided by law, the court of quarter sessions of the proper county may, upon complaint in writing by any twenty-five citizens, owners of real estate, residing in the district, issue a rule upon the officer complained of to show cause why his office should not be declared vacant and another appointed in his stead, which rule shall be made returnable not less than two weeks from its date of issue. And upon hearing, and due proof that the facts alleged in the aforesaid complaint are just and true, the court may declare the office of said officer vacant, and appoint another in his stead, to hold office during the term of the officer deposed.

Sec 1, Act of March 22, 1907, P. L. 27.

506. If the aforesaid complaint shall allege that the public roads and highways of any township are not maintained in accordance with law, the court may in its discretion appoint three suitable persons, who shall examine said highways and report to the court their findings in the premises: Provided, That in all such cases the complainants shall first enter security, in such sum as the court may fix, to pay all costs.

Sec. 2, Act of March 22, 1907, P. L. 27.

507. When any employe of any (county, city, borough, school-district, or) township of this Commonwealth shall be required to give a bond for the faithful performance of his duties, and such bond shall be required to be endorsed by a surety company, it shall be lawful for such (county, city, borough, school-district, or) township to pay the premium on such bond.

Sec. 1, Act of May 23, 1907, P. L. 225.

This act was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

#### (b) Township Commissioners of First Class Townships.

508. The persons elected township commissioners shall organize on the first Monday of January following their election; assembling for such purpose at their respective places of meeting at seven thirty o'clock in the afternoon, and, until otherwise designated by ordinance, the place of meeting shall be the oldest polling-place in the township. Each member shall take and subscribe an oath or affirmation, to be administered by a justice of the peace or notary public, to support the Constitution of the United States and of this Commonwealth, and to perform the duties of his office with fidelity. Certificates of such oaths and affirmations shall be filed with the township auditor.

If a majority of the commissioners shall not attend at the meeting on the first Monday of January, those present shall have power to adjourn the meeting, from day to day, until a majority attend.

The board shall organize by the election of one of their number as president. He shall preside at all meetings of the board, and perform such other duties as are specified in this act or which may be prescribed by ordinance.

The board shall meet at least once a month, at such time and place as may be designated by ordinance. A majority of the members of the board shall constitute a quorum.

Sec. 1, Act of June 5, 1913, P. L. 424, amending Sec. 6, Act of April 28, 1899, P. L. 104.

Where a township commissioner is elected president of the board and a majority subsequently want another president, they may lawfully elect one to take the place of their former choice: *Com. v. Pape*, 21 Dist. R.

1123.

509. Hereafter the Board of Township Commissioners of every township of the first class within this Commonwealth shall each year, within sixty days after its organization, estimate the several amounts of money which will be required for the several specific purposes of township government and expenses during the current fiscal year, and by ordinance, adopted and advertised according to law, appropriate out of the revenues available for said year the specific sums so estimated to be required; and the tax levied by the township authorities shall be fixed at such figure, within the limit fixed by law, as, with all other sources of revenue, will meet and cover said estimate and appropriation; the total appropriation not to exceed the revenue available for the said fiscal year. The said ordinance shall be open to the inspection of any taxpayer of said township, or his, her, or its authorized representative: Provided, That if the funds available from taxation or other sources shall be estimated to be in excess of the requirements of the current fiscal year, a specific appropriation may be made for the payment of township orders or indebtedness of the previous years.

Sec. 1, Act of April 27, 1909, P. L. 198, supplementing the Act of April 28, 1899, P. L. 104.

510. No work shall be hired to be done, no materials purchased or contracts made, or orders issued therefor, by the authorities of any township, in any amount, which will cause the sums so appropriated to specific purposes to be exceeded; and no change in the purpose of the appropriations shall be made unless in an ordinance, adopted and advertised according to law, the board of commissioners shall set out, in detail, the reasons for and character of such change, the said ordinance shall be open to the inspection of any taxpayer

of said township, or his, her, or its authorized representative: Provided, That nothing herein contained shall prevent any township from incurring an indebtedness, or increasing the same, to an amount and in the manner authorized by law for the purposes of permanent improvements.

Sec. 3, Act of April 27, 1909, P. L. 198, supplementing the Act of April 28, 1899, P. L. 104.

511. No contracts, hirings, or purchases made, or orders or warrants issued, after July one, one thousand nine hundred and eleven, not provided for by an appropriation by the township commissioners, as is required by law, or which would cause any such appropriation to be exceeded, shall be valid or have any binding effect upon the township.

Sec. 2, Act of June 3, 1911, P. L. 626, supplementing the Act of April 28, 1899, P. L. 104.

512. From and after the passage of this act, all contracts or purchases made by any township of the first class, involving the expenditure of over five hundred dollars, shall be in writing, and shall not be made except with the lowest and best bidder, after due notice by the secretary, published once a week for three weeks in one or more newspapers of the county in which such township shall be situated: Provided, That this section shall not apply to the operation or use, by any township of the first class, of its own tools, implements, crushers, or other adequate machinery, necessary for repairing public highways.

Sec. 1, Act of May 23, 1913, P. L. 306, amending Sec. 4, Act of June 3, 1911, P. L. 626, which was a supplement to the Act of April 28, 1899, P. L. 104.

513. No orders or indebtedness of any previous years shall be paid out of the funds of any fiscal year, except as provided in the first section of this act, or unless, after the close of such fiscal year, it shall be ascertained that the funds appropriated and available therefor are in excess of the amount required, when, in such case, such surplus may be applied to such former orders or indebtedness; and any township treasurer who shall pay the orders or indebtedness of any previous year, except as above provided, shall be allowed no credit in the settlement of his accounts for the sum or sums so paid out, nor shall he have any claim or right of action against the township therefor.

Sec. 4, Act of April 27, 1909, P. L. 198, supplementing the Act of April 28, 1899, P. L. 104.

514. All disbursements in discharge of township indebtedness duly incurred, shall be made by the township treasurer, acting by virtue of warrants, or orders, drawn on him by the order of the board of



township commissioners, attested by the signature of the president or vice president, and secretary of the board. The board shall prescribe, by ordinance, the manner in which bills for township indebtedness shall be approved for payment.

Sec. 8, Act of April 28, 1899, P. L. 104.

515. From and after the passage of this act, it shall be the duty of township commissioners in each township of the first class within this Commonwealth, except townships of the first class in counties having a board for the assessment and revision of taxes for State and county purposes, to procure and cause to be kept by the town clerk, record books, in the form of the indexes which are required by law to be kept in the office of the recorder of deeds of the particular county, for the indexing of deeds and conveyances of real estate, wherein the said town clerk shall enter, when notified by the recorder of deeds of the county as hereinafter provided, each deed or conveyance of any tract, piece, parcel, or lot of real estate within the respective township, noting the names of the grantor and grantee, the acreage of the land conveyed, if mentioned, the consideration mentioned in the deed, and the election district or districts in which the same may be located, and, if the land conveyed be a lot or lots in a recorded plan, the number or numbers by which the same may be designated on the plan, if mentioned in the deed. In one such record book, deeds or conveyances shall be noted in the name of the grantor first, and in another they shall be noted in the name of the grantee.

Sec. 1, Act of May 14, 1915, P. L. 489, amending Sec. 1, Act of April 29, 1909, P. L. 275.

516. Before the recorder of deeds of any county, wherein there is no board for the assessment and revision of taxes for State and county purposes, shall admit to record in his office any deed of conveyance of land in any township of the first class within said county, he shall charge, and collect from the person presenting the said deed of conveyance for record, the sum of fifteen (15) cents, as a fee for the service hereinafter prescribed; and, at the time of admitting the said deed of conveyance to record, the said recorder of deeds shall transmit to the town clerk of the township of the first class, in which the said land so conveyed may be located, an abstract of the said deed of conveyance, giving the name of the grantor, the name and address of the grantee, the acreage conveyed, if mentioned, and the consideration money mentioned; and, if the land conveyed be a lot or lots on a recorded plan, the number or numbers by which the same may be designated on the plan, if mentioned in the deed; and it shall be the duty of the town clerk to note the said deed of conveyance in the record books hereinbefore directed to be kept, in the

manner hereinbefore prescribed; and it shall be the further duty of the town clerk, without any fee or compensation therefor, other than the salary of his office, to ascertain and note on the said record books the election district or districts of the said township in which the said land so conveyed may be located.

Sec. 2, Act of May 14, 1915, P. L. 489, amending Sec. 2, Act of April 29, 1909, P. L. 275.

517. It shall be the duty of the assessor and assistant assessor in each township of the first class, before making the triennial assessment, to examine the record books required by this act to be kept, and to assess each tract, piece, parcel, or lot of land in the said township in the name of the owner thereof, as shown by the said record books; and it shall further be the duty of the assessor, in the years intermediate between the triennial assessments, to revise the preceding assessment according to the changes of ownership as shown by the record books, so that each tract, piece, parcel, or lot of real estate in the said township shall be assessed in the name of the then owner as shown by the said record books, and to return the said revised assessment to the county commissioners in the manner directed by law.

Sec. 3, Act of April 29, 1909, P. L. 275.

518. It is the purpose and intent of this act to provide a system of registration of real estate in townships of the first class within this Commonwealth, in order that, as far as may be practicable, all real estate in such townships shall be assessed for taxation in the name of the owner at the time of the assessment; and all acts or parts of acts, general, local, or special, inconsistent herewith, be and the same are hereby repealed.

Sec. 4, Act of April 29, 1909, P. L. 275.

### (c) Township Supervisors of Second Class Townships.

519. The supervisors of each township shall meet, at the place where the auditors of the respective townships meet to perform their official duties, on the first Monday in December, one thousand nine hundred and thirteen, and yearly thereafter; and after being duly sworn or affirmed, according to law, to discharge their duties with fidelity,—a copy of the oath to be filed with the township auditors,—shall organize as a board by electing one of their number as chairman, and shall appoint a treasurer and a secretary, who may or may not be the same person, and who may or may not be a member of the board; or the board may select a trust company or a banking institution to act as treasurer in place of an individual; and the secretary shall perform all the duties formerly performed by the township

clerk, which office has been abolished; and the said secretary shall receive as compensation for his services such sum as shall be fixed by the township auditors: Provided, That the combined amount paid to said secretary and treasurer shall not exceed two per centum of the money paid out by the said treasurer, except where such percentage would be less than ten dollars. The board shall proceed to levy a road tax, not later than the fourth Monday of March of each year, which tax shall not exceed ten mills on each dollar of the assessed valuation. This valuation shall be the last adjusted valuation used for the county rates and levies, and shall be furnished to the said township supervisors by the commissioners of the proper county: Provided, That if any further adjustment of valuation of any property is made by the county commissioners, after said tax is so levied and before said tax is payable, such valuation so adjusted shall be certified to the township supervisors, and to the township collector of taxes, by the commissioners of the proper county, and the tax shall be collected on the basis of such valuation, as so adjusted: Provided, That a greater rate than ten mills, and not to exceed ten additional mills, may be levied by order of the court of quarter sessions of the peace of that county, upon petition of the board of supervisors, with their unanimous recommendation and upon due cause shown: Provided, however, That the said road tax shall hereafter be collected in cash, and no such taxes shall be payable in labor or worked out. Each township coming under the provisions of this act shall receive annually from the State fifty per centum of the total amount of road tax collected by such township, as shown by the sworn statement of the board of township supervisors, contained in the annual report furnished to the State Highway Commissioner on or before the first day of January in each year, as hereinafter provided for: Provided, That no township shall receive, in any one year, more than twenty dollars for each mile of township road in said township. Such distribution shall be made on a basis of an average amount to each mile of township road. Upon receipt of the sworn statement from the board of township supervisors, it shall be the duty of the State Highway Commissioner to certify to the Auditor General the amount due the respective township, and he shall draw a warrant upon the State Treasurer for the payment of the amount due said township, under the provisions of this section, to the treasurer of the board of township supervisors, which shall be paid out of the money appropriated for that purpose: Provided, however, No such payment shall be made until such treasurer has filed in the office of the superintendent in charge of such county or district, and with the State Highway Commissioner, a certified copy of the bond given by him as hereinafter provided for in this act; nor until the agreement for the expenditure of such State money together with the township's



money has been made and approved as hereinafter provided for: Provided, That whenever the township highway funds, together with funds appropriated by the General Assembly for State aid to township roads, have been exhausted, the board of supervisors is hereby authorized to issue a certificate of indebtedness, and borrow, on the credit of the township, money in anticipation of taxes to be collected, to the end that work may be performed in proper season and in accordance with rules and regulations prescribed.

The State Highway Commissioner shall furnish, from time to time, bulletins of instruction to each board of township supervisors for the building, repairing, and maintenance, and improvement of township roads and bridges, and shall furnish any additional information when called upon to do so. The State Highway Commissioner shall also furnish, from time to time, free of charge, standards, plans and specifications for permanent improvements in the building of bridges and culverts, establishing of grades, proper drainage, and such other matters as he may deem essential. The State Highway Department shall furnish blanks to the supervisors, in which said supervisors, or a majority of them, shall make a sworn statement that the money has been expended in building, repairing, maintaining, dragging, and improving the township roads, according to the instructions, standards and specifications or the rules and regulations prescribed by the State Highway Department, so far as the available funds and local conditions make it possible: Provided further, That upon the neglect or refusal of the supervisors of any township to carry out the instructions, rules, and regulations of the State Highway Commissioner, then the State Highway Commissioner, may withhold from said township, so neglecting or refusing the amount to which it would otherwise be entitled for the year in which said neglect or refusal occurred.

Sec. 1, Act of June 11, 1915, P. L. 947, amending Sec. 5, Act of July 22, 1913, P. L. 915.

520. The provisions of section five of an act approved the twenty-second day of July, one thousand nine hundred thirteen, (P. L. 915), entitled "An act relating to roads; providing for the supervision, construction, maintenance, and repair of township roads; relating to road tax; and providing penalties for the violation thereof," in so far as they provide that each township coming under the provisions of the act shall receive annually from the State fifty per centum of the total amount of road tax collected by such township, but not to exceed twenty dollars per mile, are hereby suspended until the following conditions have been fulfilled:—

Instead of fifty percentum of such road tax being paid by the State to the township, in the manner provided by the act, such township shall be entitled to receive annually, from the State such fifty per



centum, but not exceeding twenty dollars per mile, which, however, shall be applied to the payment and satisfaction of any deficiency due the township under the provisions of an act approved the twelfth day of April, one thousand nine hundred five, (P. L. 142,) entitled "An act providing for the election and appointment for road supervisors in the several townships of the second class of this Commonwealth; defining their duties; authorizing them to make, repair and maintain roads and bridges, let contracts for the same, levy and collect taxes, employ labor, divide townships into districts, appoint road-masters and treasurer, purchase road-making implements and machines; prescribing penalties for violation of this act; and requiring the road supervisors to report to township auditors and to the State Highway Commissioner, from time to time; and for the payment of a percentage of road tax to townships that abolish the work tax; and for the repeal of all laws, general, local, or special, inconsistent herewith, or supplied hereby," as amended; and of an act, approved the fourteenth day of June, one thousand nine hundred eleven, (P. L. 942), entitled "An act relating to roads; providing for the election and appointment of township supervisors in second class townships; defining their powers, duties, and limitations relating to road tax, and the expenditures thereof; abolishing the work tax; defining certain duties of the clerk of court; fixing penalties for violation of this act; and making an appropriation to carry out its provisions;" and of an act, approved the twenty-second day of July, one thousand nine hundred thirteen, (P. L. 915), entitled "An act relating to roads; providing for the supervision, construction, maintenance, and repair of township roads; relating to road tax; and providing penalties for the violation thereof," until such deficiencies have been paid.

All moneys so appropriated and paid by the Commonwealth in payment and satisfaction of said deficiency, if any, shall be paid out and expended in accordance with the provisions of the act to which this act is a supplement.

Sec. 1, Act of June 3, 1915, P. L. 806.

This act is a supplement to the Act of July 22, 1913, P. L. 915.

521. It shall be the duty of the township auditors (and borough councils) to require (the overseers of the poor and) the supervisors of roads in each township (and borough) in this commonwealth, except in the county of Schuylkill, before entering upon their duties, to give bond, with security, to be approved by the auditors (or borough councils,) in a sum not less than double the probable amount of the tax which may come into the hands of the said officers; which bonds shall be taken in the name of the township (or borough,) conditioned for the faithful performance of their respective duties as

supervisors (and overseers of the poor,) accounting for and paying over to the township treasurer, or to their successors in office, any balance that may remain in their hands at the settlement of their accounts by the aforesaid auditors (or borough councils;) and in case the said officers shall neglect or refuse to pay over said balance remaining in their hands within thirty days after the settlement, it shall be the duty of the said auditors (and borough councils) holding the bonds, to proceed, by due course of law, to collect the same for the use of said township (or borough:) Provided, That each officer may give security, individually, in double the amount of such sum as may, in the judgment of the auditors (or borough councils,) come into his hands for the ensuing year; and in such case he shall not be accountable for the acts of his associate in office.

Sec. 1, Act of March 16, 1860, P. L. 174.

This act was held supplid by the Act of April 12, 1905, P. L. 142. Under the Act of 1905, supervisors had no authority to receive or collect any taxes and consequently the condition specified in the Act of 1860 could not be complied with: *Chapman Township Supervisors 22 Dist. R. 950; Deckert v. Reisinger, 8 Pa. Justices Law Repr. 141.*

522. Any officer or officers failing to give the security required by the first section of this act, within one month after his election, then his or their offices shall be declared vacant, and the court of quarter sessions shall appoint one or more, as the case may be, subject to all the restrictions of the first sections of this act, and who shall hold his or their office till the next election; and until such appointment is made, the officer or officers giving bail shall act for one or more, and if all fail to give the required security, then the preceding officers shall perform the duties as heretofore, until such appointment is made by the court, in accordance with the provisions of this act.

Sec. 2, Act of March 16, 1860, P. L. 174.

The Act of March 16, 1860, P. L. 174, which provides that certain offices shall be declared vacant if the official fails to file a bond within one month after his election, is not mandatory irrespective of the reasons for the failure to file the bond. The word "shall" in the act means "may". The omission of a supervisor to give bond does not ipso facto oust him from office at the end of thirty days. It requires judicial action to declare the office vacant: *Anderson's Appeal, 215 Pa. 119.*

523. Any officer failing to give the security required by this act, shall not be liable for the penalty imposed by existing laws upon township (and borough) officers refusing to serve: Provided, That the auditors (and borough council) shall be satisfied that such security could not be obtained.

Sec. 3, Act of March 16, 1860, P. L. 174.

The penalty referred to is under Section 85 of the Act of April 15, 1834, P. L. 537, supra Section 503: *Anderson's Appeal, 215 Pa. 119.*

524. The township supervisors shall meet for the transaction of business once each month, at a time to be fixed by the board. Two members shall constitute a quorum. The board shall be allowed for necessary expenses, including office rent, and stationery, light and fuel, to be paid out of the township road funds. Upon request, the township auditors shall allow those supervisors who do not act in the capacity of superintendent or roadmasters to collect from the township road funds, as compensation for serving as township supervisors, an amount which will average not less than one dollar nor more than four dollars for each monthly meeting attended, the amount to be determined by the township auditors. In addition thereto, the township auditors shall allow to the township supervisors compensation for making a semi-annual inspection of the roads and bridges.

Sec. 3, Act of June 11, 1915, P. L. 947, amending Sec. 15, Act of July 22, 1913, P. L. 915.

525. The board of township supervisors shall keep minutes of their proceedings, and such books as they may find necessary in the performance of their duties; all of which shall be open for the inspection of any taxpayer at all reasonable times, and which shall be submitted for the information of the township auditors when said auditors meet to audit the accounts of the treasurer and other township officers; and shall deliver such books, papers, and accounts to their successors. The State Highway Commissioner may, at such times, as may be deemed expedient, cause an examination to be made of all accounts and records kept as required by this act; and it shall be the duty of all (county and) township officers to produce all such accounts for examination and inspection at any reasonable time, on demand of a duly appointed representative of the State Highway Department. It shall also be the duty of the treasurer to produce all such records for the inspection of any taxpayer, and to submit the same to the township auditors when said auditors meet as herein provided.

Sec. 17, Act of July 22, 1913, P. L. 915.

526. It shall be the duty of the board of township supervisors, immediately after their organization as a board, to divide their township into one or more road districts; and they shall employ a superintendent for the entire township, or a roadmaster for each district. Township supervisors, may require the superintendent or roadmasters to give bond, with approved security, for faithful performance of their duties, and said superintendent or roadmasters shall at all times be subject to removal by the board of supervisors. The township supervisors, from time to time, shall fix the wages to be paid



per hour to the superintendent or roadmasters and laborers for work on the roads and bridges: Provided, however, That nothing in this act shall prohibit the board of township supervisors from making a contract for the improvement and keeping in repair of not more than ten miles of road; no contract to extend over a period of more than four years, and no contract to be given unless approved of and signed by at least two of the board of township supervisors. Every contractor for road work shall give bond for the amount of said contract, and sign specifications furnished by the township supervisors for the building and care of such contract roads: Provided, also, That nothing in this act shall prohibit the township supervisors should they deem it advisable from overseeing and working on the roads themselves, in part or all of the roads in their townships; in which case they shall not be required to employ a superintendent or roadmasters. The compensation of such supervisors, when overseeing or working on roads, shall be fixed by the township auditors: Provided, however, That the rate per day shall not be less than one dollar and fifty cents, nor more than three dollars.

Sec. 6, Act of July 22, 1913, P. L. 915.

527. Hereafter each supervisor in the several townships in this Commonwealth, shall be allowed in the settlement of his accounts, the sum of one dollar and fifty cents for each day he shall be necessarily employed in the discharge of the duties of his office; Provided, That this act shall not apply to counties and townships having special or local laws fixing the compensation of supervisors.

Sec. 1, Act of May 4, 1889, P. L. 87.

It would seem that this section was repealed by Section 6 and Section 15 of the Act of July 22, 1913, P. L. 915, as amended by the Act of June 11, 1915, P. L. 947, see *supra* Sections 526 and 524.

528. The township superintendent or the roadmasters, under the general direction of the board of supervisors, or the supervisors acting as superintendent or roadmasters, all subject to the rules and regulations of the State Highway Commissioner, shall—

First. Have the general care and superintendence of the improvement of the highways and bridges in the township, except as otherwise specially provided.

Second. Cause such highways and bridges to be kept in repair, and free from obstructions caused by snow, trees, brush, et cetera, and give the necessary directions therefor, and inspect the highways and bridges within the township during the months of April and October of each year, or at such other times as the board of supervisors or the superintendent may direct.



Third. Divide the township into as many sections as may be necessary for the proper maintenance and repair of the highways therein and the opening of highways obstructed by snow.

Fourth. Employ or hire such persons, teams and implements as may be necessary for the proper maintenance and repair of highways and bridges, and the removal of obstructions caused by snow, subject to the approval of the board of supervisors, and provide for the organization and supervision of the persons so employed, and work on the roads themselves when directed to do so by the board of supervisors. Records shall be kept, and reports made and filed, giving the names of all persons so employed, including supervisors, superintendent, or road masters; dates on which work was done, and nature and location of same, with compensation paid to each, and the capacity in which they are employed.

Fifth. Construct and keep in repair sluices and culverts, and cause the waterways, bridges, and culverts to be kept open.

Sixth. Cause loose stones lying in the beaten track of every highway within his township to be removed. Stones so removed shall be conveyed to some place from which they shall not work back, or be brought back, into the track by road machines, road drags, or by other implements used in repairing or maintaining such highways.

Seventh. Report monthly to the board of supervisors—containing the matter and in the form to be prescribed by the State Highway Commissioner.

Eighth. Attend such road meetings and conventions as may be called, when directed to do so by the board of supervisors.

Ninth. Perform such other duties and have such other powers as may be imposed or conferred by law, or the rules and regulations of the State Highway Commissioner.

Sec. 7, Act of July 22, 1913, P. L. 915.

529. Moneys levied and collected, or received from the State as State aid, according to the provisions of this act, shall be expended at such place and in such manner as may be agreed upon by the board of supervisors. Such agreement, which shall be upon a blank furnished by the State Highway Commissioner, shall be written, and signed in triplicate by a majority or all of the members of the board, and shall be approved by the superintendent in charge of such county or district, and the State Highway Commissioner, before the same shall take effect, and before the State's money shall be paid to the treasurer of the board of township supervisors as hereinbefore provided. One of such triplicate copies shall be filed with the treasurer, one in the office of the superintendent, and one with the State Highway Commissioner.

Sec. 10. Act of July 22, 1913, P. L. 915.

530. The State Highway Commissioner shall supply the necessary books, blanks, and forms, and shall prescribe the method of keeping township accounts of moneys received and expended, as provided for in this act, for highways, machinery, bridges, tools, and implements, and for miscellaneous purposes, which shall be uniform through the State so far as practicable. All books, blanks, forms, reports, et cetera, provided for in this act, shall be forwarded by the State Highway Commissioner to the various boards of supervisors by December first of each year.

Sec. 13, Act of July 22, 1913, P. L. 915.

531. The board of supervisors of the several townships shall annually on or before the first day of January in each and every year, make a sworn statement to the State Highway Commissioner, on blanks furnished to them by the State Highway Commissioner, of the whole amount of tax levied during the preceding year for road purposes, and the total amount of road taxes collected during the year; specifying in such report the amount expended for maintenance or repairs of roads, for opening and building of new roads, and for macadamizing or otherwise permanently improving roads, and the number of miles thus made, and the total number of miles of township roads in said township; together with the names and addresses of the chairman, members, and secretary and treasurer of the board, and such other matters and things as the State Highway Commissioner may require. It shall be the duty of the clerk of courts in each county, not later than the twentieth day of November following every municipal election, to certify to the State Highway Commissioner the names and post office addresses of all supervisors and commissioners of the respective townships in said county. The failure or neglect of any clerk of courts to furnish such list shall be deemed a misdemeanor, and, on conviction thereof, shall be punished by fine of not more than fifty dollars, at the discretion of the court.

Sec. 21, Act of July 22, 1913, P. L. 915.

532. After the taking effect of this act, the fiscal year shall expire on the day before the first Monday in December in each year, and all receipts, disbursements, contracts, or purchases subsequent to that date shall be chargeable to and entered as of record in the fiscal year following.

Sec. 12, Act of July 22, 1913, P. L. 915.

533. The board of township supervisors shall annually, before their organization meeting in December, or as soon thereafter as practicable, make or cause to be made written estimate of the amount of money which should be raised in the township for the ensuing year,

beginning on the first Monday of December, for the purpose therein set forth, which shall be filed with the treasurer. Such estimates for the purpose of aiding the board in determining how much road tax to levy shall specify:—

First. The amount of money necessary to be levied and collected for the maintenance, repair, and improvement of highways, including sluices;

Second. The amount of money to be levied and collected for the repair and construction of culverts and bridges;

Third. The amount of money to be levied and collected for the purchase, hire, repair, and custody of tools, implements, and machinery.

Fourth. The amount of money necessary to be levied and collected for the payment of debts, or other miscellaneous purpose.

Sec. 11, Act of July 22, 1913, P. L. 915.

534. The supervisors of each township shall make, or cause to be made, a duplicate designating the amount of road tax levied against each taxpayer of the township, and deliver the same to the township collector, who shall, after receiving said duplicate, give notice thereof in the same manner as is now required by law in collection of State, county, and poor taxes, and shall give him a warrant to collect the tax, which shall be collected as follows, namely: To all taxpayers who pay their road tax to the collector before June first of each year, an abatement of five per centum shall be made; on all road taxes paid to the collector between June first and October first, of each year, the taxpayers shall pay the full amount of the road tax levied against them; and on all road taxes remaining unpaid on the first of October, in each year, the collector shall add five per centum thereto as penalty for such delinquency, and shall collect said penalty in addition to the tax levied, said penalty to be his compensation for collecting said delinquent taxes. The tax collector shall be allowed two per centum on all taxes collected on this duplicate previous to the first day of June of each year, and five per centum on all taxes collected from June first to October first.

The tax collector shall keep correct accounts of all moneys collected, marking paid on his duplicate each taxable amount of tax, and the date on which paid; and said collector shall, on the first of each month, make a true and correct statement in writing to the secretary of the board of supervisors, for their use, of all taxes collected during the previous month, giving names of taxables and amount collected from each, and the total amount received; and said collector shall pay over, on the first day of each month, to the treasurer, all moneys collected during the previous month and take his receipt for same. In case of the refusal or neglect of any tax col-



lector to comply with the provisions of this act, he shall be guilty of a misdemeanor, and on conviction shall be sentenced to pay a fine of not less than one hundred dollars, or to be imprisoned for a term not exceeding one year, or both, at the discretion of the court.

Sec. 14, Act of July 22, 1913, P. L. 915.

535. It shall not be lawful for any superintendent of highways, township supervisor, superintendent or roadmaster, to be interested, either directly or indirectly, in any purchase made or contract relating to roads and bridges, except as provided for in this act, nor to furnish any materials therefor. Any person knowingly violating the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be sentenced to pay a fine not exceeding five hundred dollars (\$500), or to be imprisoned for a term not exceeding six months, both or either, at the discretion of the court, and shall forfeit his office.

Sec. 18, Act of July 22, 1913, P. L. 915.

536. If any superintendent, township supervisor, township superintendent, roadmaster, or contractor, employed to work on the roads, bridges and highways of the Commonwealth, shall violate any of the provisions of this act, other than those otherwise provided for, or shall fail, neglect or refuse to carry out the provisions of the same, he shall be guilty of a misdemeanor, and, upon conviction, sentenced to pay a fine of not more than fifty dollars (\$50), to be collected in the name of the township, as other debts of like amount, and paid to township treasurer, for the use of the road fund of said township.

Sec. 19, Act of July 22, 1913, P. L. 915.

537. The township supervisors or superintendents of the several townships of this Commonwealth, elected or appointed in pursuance of this act, shall have all the powers and shall perform all the duties imposed by the existing laws on supervisors of roads and bridges and highways, and shall be subject to the same responsibilities and penalties as road supervisors are now subject to, except in so far as changed or supplied by the terms of this act.

Sec. 20, Act of July 22, 1913, P. L. 915.

538. The provisions of this act shall take effect the first Monday of December, Anno Domini one thousand nine hundred and thirteen, except those sections providing for the election of township supervisors, which shall govern the election of township supervisors at the municipal election in the year one thousand nine hundred and thirteen. As this act goes in effect, all acts or parts of acts, general, special or local, inconsistent herewith or supplied hereby, be and



the same are hereby repealed. Provided, however, That an act entitled "An act enabling the taxpayers of townships and road districts to contract for making, at their own expense, roads, and paying salaries of township or road district officers, and thereby preventing the levy and collection of road tax therein," approved June twelfth, one thousand eight hundred and ninety-three; (P. L. 451,) and the act, entitled "An act providing for the original location, laying out, and construction of public roads or highways in the several counties of this Commonwealth, and for the permanent improvement of certain public roads or highways therein; making such originally constructed or improved roads and highways county roads; authorizing the relocation, opening, straightening, widening, extension, and alteration of the same, and the vacation of so much of any road as may thereby become unnecessary; providing that the county commissioners of any county may prescribe rules regulating the use of roads constructed or maintained by the various counties, and prescribing penalties for the violation thereof; providing for the taking of property for such improvement, the compensation to be paid therefor, and the payment of damages resulting from such taking, and the manner in which such damages may be determined; providing for the payment of the costs and expenses of such construction or improvement, and in thereafter repairing and maintaining said roads; authorizing the levy of a tax or the issuing of bonds to provide a fund for the expense thereof; prescribing a method for improving a county road lying within or traversing a borough, and apportioning the cost of such improvement; and authorizing the vacation of any county road," approved the eleventh day of May, Anno Domini one thousand nine hundred and eleven; (P. L. 244), also "An act to provide for the classification of the townships of the Commonwealth, with respect to their population, into two classes, and to prescribe the form of government for townships of each class," approved April twenty-eighth, one thousand eight hundred and ninety-nine; (P. L. 104.) also "An act to amend an act entitled 'An act to provide for the classification of townships of the Commonwealth, with respect to their population into two classes, and to prescribe the form of government for townships of each class,' approved April twenty-eighth, one thousand eight hundred and ninety-nine," approved the twenty-fourth day of May, one thousand nine hundred and one, (P. L. 294,) shall not be repealed or affected hereby.

Sec. 22, Act of July 22, 1913, P. L. 915.

539. The supervisors of each township elected or appointed in pursuance of this act shall perform all the duties imposed by law on supervisors of the public roads or highways, and be subject to the same responsibilities, (and shall be by virtue of their office overseers

of the poor of the township, where the poor are a township charge). And it shall be the duty of the said supervisors to keep fair and clear accounts, in a book to be provided for the purpose, of all moneys received by them or either of them, and by them or either of them expended on behalf of the township; and such accounts, verified by oath or affirmation, shall be exhibited to the township auditors, at the annual settlement of the accounts of such supervisors.

Sec. 90, Act of April 15, 1834, P. L. 537.

The duty of supervisors as overseers of the poor was repealed by Section 9 of the Act of February 28, 1835, P. L. 45.

540. If any supervisor shall, after ten days' notice, neglect or refuse to produce his account before the auditors, or to pay over to his successor in office any balance of public money in his hands, or to deliver to such successor the books of account as aforesaid, it shall be lawful for the auditors, by warrant under their hands and seals, directed to the sheriff or any constable of the county, setting forth particularly the cause of such commitment, to commit such delinquent to the county jail, until he shall comply with the requisitions of the law, or be otherwise legally discharged.

Sec. 91, Act of April 15, 1834, P. L. 537.

Where a supervisor has a claim against a township, for services rendered or money expended, it should be presented to the auditors for allowance, and if refused his only remedy is by appeal to the common pleas. A common law action will not lie, as there is no specific remedy provided by statutes: *Brown v. White Deer Township*, 27 Pa. 109.

541. If any supervisor shall neglect or refuse to perform any duty required of him by law, he shall forfeit and pay a sum not less than four dollars nor exceeding fifty dollars, to be recovered in a summary way, by action of debt, in the name of the commonwealth, before any justice of the peace of the county, to be applied towards repairing the highways of the said township: Provided, That such supervisors may appeal from the judgment of such justice, to the next court of quarter sessions, who shall take such order thereon as to them shall appear just and reasonable, and the same shall be final and conclusive.

Sec. 92, Act of April 15, 1834, P. L. 537.

542. It shall be a misdemeanor, and punishable by indictment, to withhold moneys collected as supervisors after the expiration of the term of office.

Sec. 5, Act of April 26, 1850, P. L. 592.

(d) Treasurer.

(1) Provisions Relating to Both First and Second Class Townships.

543. Whenever any moneys shall have been or may hereafter be collected by law, in any (city, county or) township, for any special purpose, and paid into the hands of the treasurer of such (city, county or) township, it shall be unlawful for such treasurer to apply such moneys, or any part thereof, to any other purpose than that for which such moneys shall have been or may be collected; and every such misapplication shall be held and deemed a misdemeanor, for which such treasurer may be indicted and tried in the court of quarter sessions of the proper (city or) county; and upon conviction thereof, such treasurer shall be punished by fine of not less than the amount so misapplied, and by imprisonment in the jail of the proper (city or) county for not less than three months, nor more than one year: Provided, That prosecutions for all offences under this act, shall be commenced within six years from the time when such offence was committed.

Sec. 1, Act of May 16, 1857, P. L. 535.

544. If any township treasurer shall neglect or refuse to perform any of the duties of his office, he shall be fined in a sum not exceeding one hundred dollars and shall be disqualified from holding the office.

Sec. 98, Act of April 15, 1834, P. L. 537.

(2) Provisions Relating Exclusively to First Class Townships.

545. The same person may hold the office of township treasurer and treasurer of the school board; but no member of the school board, no township commissioner, or township auditor shall hold the office of township treasurer.

Sec. 1, Act of May 13, 1915, P. L. 303.

This act amends Section Eighteen of the Act of April 28, 1899, P. L. 104, as amended by the Act of May 21, 1913, P. L. 283.

For the election of township treasurer see *infra* Section 600.

546. Each township treasurer shall give a bond, in the sum to be prescribed by ordinance, and at least equal to the probable amount of the annual township tax, with sureties to the satisfaction of the board of township commissioners, (which bond shall be conditioned for the faithful performance of the duties of his office, for a just account of all moneys belonging to the township funds that may come into his hands, for the delivery to his successor in office of all papers, books, documents and other things held in right of his office, and for the payment to such successor of any balance in money belonging to the township that may remain in his hands on the set-



tlement of his accounts). All said bonds shall be filed with the township commissioners.

Part of Sec. 13, Act of April 28, 1899, P. L. 104.

So much of this section as is included in brackets seems to be supplied by Section 5 of the Act of April 27, 1909, P. L. 198, *infra* Section 547. It seems that the township treasurer gives a separate bond as collector of taxes under the Acts of June 6, 1893, P. L. 333, *supra* Section 391, and May 8, 1909, P. L. 474, *supra* Section 425.

547. The bond given by the treasurer of every township of the first class shall be conditioned for the faithful performance of the duties of his office, for a just account of all moneys belonging to the township funds that may come into his hands (and payment over thereof, only in the manner prescribed by law), for the delivery to his successor in office of all papers, books, documents, and other things held in right of his office, and for the payment to such successor of any balance in money that may remain in his hands, or be charged against him in the settlement of his accounts.

Sec. 5, Act of April 27, 1909, P. L. 198.

This act supplements the Act of April 28, 1899, P. L. 104.

See *supra* Section 507 authorizing the township to pay the premiums on the bond of township officers.

The treasurer of a township of the first class must account for the whole amount of the tax duplicates delivered to him, not merely for all moneys belonging to the township funds that may come into his hands.

*In re Bryn Mawr Trust Company*, 14 D. R. 17.

548. Each township treasurer shall receive, as full compensation for his services, a sum equal to five per centum of all taxes received or collected by him, and, in addition thereto, a sum equal to one per centum on all other moneys received or collected by him, unless a different rate be fixed by ordinance of the township commissioners, passed thirty days prior to his election.

Sec. 1, Act of June 7, 1907, P. L. 452.

This section amends Section 14 of the Act of April 28, 1899, P. L. 104.

549. It shall be the duty of every township treasurer to take charge of all township moneys, and to keep distinct accounts of all sums received from taxes and other sources, which accounts shall at all times be open to the inspection of the commissioners and township auditors, or any of them. He shall annually state his accounts and lay the same, together with the books and the vouchers, before the township auditors for settlements according to law.

Part of Sec. 13, Act of April 28, 1899, P. L. 104.

550. No money shall be paid out by the township treasurer except on the written order, or warrant, issued by the board of township



commissioners and attested by the signature of the president, or vice president, and the secretary of said board.

Sec. 17, Act of April 28, 1899, P. L. 104.

551. The township treasurer shall pay out the moneys coming into his hands for said fiscal year, only upon orders numbered in the order of their issue, signed by the president and attested by the secretary of the board, and designating the appropriated fund out of which said orders shall be paid; and any township treasurer who shall pay out moneys in his hands, except upon such orders, or shall pay out moneys in excess of the appropriations aforesaid, shall be allowed no credit in the settlement of his accounts for the sum or sums so paid out, nor shall he have any claim or right of action against the township therefor.

Sec. 2, Act of April 27, 1909, P. L. 198.

This act supplements the Act of April 28, 1899, P. L. 104.

For additional duties of the township treasurer with regard to the payment of orders or indebtedness of previous years see Section Four of the Act of April 27, 1909, P. L. 198, supra Section 513.

552. All disbursements in discharge of township indebtedness duly incurred, shall be made by the township treasurer, acting by virtue of warrants, or orders, drawn on him by the order of the board of township commissioners, attested by the signature of the president or vice president, and secretary of the board. The board shall prescribe, by ordinance, the manner in which bills for township indebtedness shall be approved for payment.

Sec. 8, Act of April 28, 1899, P. L. 104.

### (3) Provisions Relating Exclusively to Second Class Townships.

553. The supervisors of each township shall (meet, at the place where the auditors of the respective townships meet to perform their official duties, on the first Monday in December, one thousand nine hundred and thirteen, and yearly thereafter; and after being duly sworn or affirmed, according to law, to discharge their duties with fidelity,—a copy of the oath to be filed with the township auditors,—shall organize as a board by electing one of their number as chairman, and shall) appoint a treasurer and a secretary, who may or may not be the same person, and who may or may not be a member of the board; or the board may select a trust company or a banking institution to act as treasurer in place of an individual; (and the secretary shall perform all the duties formerly performed by the township clerk, which office has been abolished; and the said secretary shall receive as compensation for his services such as shall be fixed by the township auditors:) Provided, That the combined amount

paid to said secretary and treasurer shall not exceed two per centum of the money paid out by the said treasurer, except where such percentage would be less than ten dollars.

Part of Sec. 1, Act of June 11, 1915, P. L. 947, amending Sec. 5, Act of July 22, 1913, P. L. 915.

The office of treasurer in townships of the second class was formerly elective under the provisions of Section 81 of the Act of April 15, 1834, P. L. 537, but this section of the Act of 1834 was repealed so far as it related to treasurer by Section 8 of the Act of February 28, 1835, P. L. 46, except as to the counties of Erie, Franklin, Wayne, Venango, Warren, Susquehanna, Bradford, Tioga and Luzerne. Prior to the passage of the Act of June 23, 1897, P. L. 194, there was no such office of township treasurer except in the counties named in Section 8 of the above Act of 1835. (See *Banks Township v. Frey*, 10 Pa. C. C. 580.) It is a question whether the Act of June 11, 1915, P. L. 947, does not obtain in the above named counties as the language of the amendment and the original Act of July 22, 1913, P. L. 915, seem to indicate the intent to provide a system which should obtain generally throughout the Commonwealth.

554. The treasurer appointed by the board of township supervisors, if an individual, shall be required to give bond, with at least two sufficient sureties, to be approved by the auditors of the township, conditioned that the said treasurer shall well and truly account for and pay over all moneys collected or paid by the State according to the provisions of this act, and received by him, only upon a written order signed by two members of the board of supervisors; which order shall be by the use of blanks, prepared and furnished by the State Highway Commissioner, which is for the purpose of providing a uniform system of accounting and auditing throughout the State.

Sec. 2, Act of June 11, 1915, P. L. 947, amending Section 9, Act of July 22, 1913, P. L. 915.

See note on section 427 supra.

See supra section 507 authorizing the township to pay the premiums of the bonds of the township officers in certain cases.

555. Each township treasurer shall give bond, with sureties, to the satisfaction of the supervisors of the same township, conditioned for the faithful performance of the duties of his office, for a just account of all moneys that may come into his hands by virtue thereof, for the delivery to his successor in office of all books, papers, documents and other things held in right of his office, and for the payment to him of any balance of money belonging to the township that may remain in his hands.

Sec. 95, Act of April 15, 1834, P. L. 537.

The township treasurer under this act was an elected officer. Under the Act of 1913, July 22, P. L. 915, this officer is appointed by the supervisors and gives bond conditioned "that the said treasurer shall well and truly account for and pay over all moneys collected or paid by the State

according to the provisions of this act, and received by him." (Amendment of June 11, 1915, P. L. 947). Whether this clause is broad enough to cover all moneys received or is limited to those received from the State, does not seem clear. If only the latter, then it would seem that this section of the Act of 1834 was still in force.

See supra section 507 empowering the township to pay the premiums on the bond of township officers in certain cases.

556. It shall be the duty of every township treasurer, to receive all moneys due or accruing to the township, and to keep distinct accounts of all sums received from taxes and other sources, which accounts shall at all times be open to the inspection of the supervisors of the township, and of each of them; he shall pay all moneys received by him from taxes, or otherwise, on orders drawn by the supervisors of the township; and he shall annually state his accounts, and lay the same, together with the vouchers, before the township auditors, for settlement according to law.

Sec. 96, Act of April 15, 1834, P. L. 537.

557. Each township treasurer shall receive, in full compensation for his services, a certain amount per cent. on all moneys received and paid by him, which rate shall be settled, from time to time, by the supervisors of the township, with the approbation of the township auditors.

Sec. 97, Act of April 15, 1834, P. L. 537.

See supra section 553 for additional provisions relative to the compensation of the township treasurer.

#### (e) Secretary and Town Clerk.

##### (1) Provisions Relating to Both First and Second Class Townships.

558. The town-clerk in each township shall be clerk to the supervisors of the same township, and as such shall keep a record of the proceedings of the said officers, and shall receive such compensation therefor as they shall determine.

Sec. 99, Act of April 15, 1834, P. L. 537.

The office of town clerk was abolished in townships of the second class by the Act of June 14, 1911, P. L. 942. These duties are now performed by the secretary. See section 1, Act of June 11, 1915, P. L. 947, supra section 519.

559. It shall be the duty of each town-clerk, whenever necessary to provide a suitable book or books, for the purpose of entering therein all matters of which he shall by law be required to keep a record; the expense of which books shall be paid by the township treasurer out of the township funds.

Sec. 100, Act of April 15, 1834, P. L. 537.



560. The book or books so to be provided by the town clerk shall be kept by him, and shall be open to the inspection of any person who may have occasion to search therein, and for each search, he shall be entitled to a fee of ten cents.

Sec. 101, Act of April 15, 1834, P. L. 537.

## (2) Provisions Relating Exclusively to First Class Townships.

561. The board of commissioners shall elect a town clerk, who must be a qualified voter of the township, and not a member of the board. He shall perform all the duties of town clerk, as prescribed by existing laws; he shall also act as secretary of the board, shall be the official keeper of the minutes, and shall generally do and perform such duties as may be prescribed by ordinance of the board. His salary shall be fixed by ordinance.

Sec. 19, Act of April 28, 1899, P. L. 104.

For duties of town clerk as prescribed by existing law see sections 99, 100 and 101, Act of April 15, 1834, P. L. 537, *supra* sections 558, 559 and 560. A member of the legislature may hold the position of clerk and secretary to the board of township commissioners under the Act of April 28, 1899, P. L. 104. Such position is not incompatible under Article II, Section 6 of the Constitution, with the office of a member of the legislature: *Comm. ex rel. v. Murphy*, 25 Pa., C. C. 637.

For additional duties of the town clerk and secretary see *supra* sections 515 and 516.

562. The secretary of the board of commissioners of every township of the first class within this Commonwealth shall keep a record of the appropriations made by the township commissioners, and the amounts chargeable thereto, by reason of contracts, hirings, or purchases, as they occur, and shall furnish to any person requesting the same a statement showing the amount then available for future charges against any appropriated fund; and any such secretary who shall knowingly furnish an incorrect statement, upon such request, shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of not more than five hundred dollars.

Sec. 1, Act of June 3, 1911, P. L. 626, supplementing the Act of April 28, 1899, P. L. 104.

563. The minute book and other records and documents of every township of the first class shall be open to the inspection of any taxpayer thereof, his, her, or its agent, upon demand therefor.

Sec. 3, Act of June 3, 1911, P. L. 626, supplementing the Act of April 28, 1899, P. L. 104.

## (3) Provisions Relating Exclusively to Second Class Townships.

564. The supervisors of each township (shall meet, at the place where the auditors of the respective townships meet to perform their



official duties, on the first Monday in December, one thousand nine hundred and thirteen, and yearly thereafter; and after being duly sworn or affirmed, according to law, to discharge their duties with fidelity,—a copy of the oath to be filed with the township auditors,—shall organize as a board by electing one of their number as chairman, and) shall appoint a treasurer and a secretary, who may or may not be the same person, and who may or may not be a member of the board; (or the board may select a trust company or a banking institution to act as treasurer in place of an individual;) and the secretary shall perform all the duties formerly performed by the township clerk, which office has been abolished; and the said secretary shall receive as compensation for his services such sum as shall be fixed by the township auditors: Provided, That the combined amount paid to said secretary and treasurer shall not exceed two per centum of the money paid out by the said treasurer, except where such percentage would be less than ten dollars.

Part of Sec. 1, Act of June 11, 1915, P. L. 947, amending Sec. 5, Act of July 22, 1913, P. L. 915.

For the duties of the town clerk see sections 99, 100 and 101, Act of April 15, 1834, P. L. 537, sections 558, 559 and 560 *supra*. The office of town clerk in second class townships was abolished by the Act of June 14, 1911, P. L. 942.

#### f) Auditors. Provisions Relating to Both First and Second Class Townships.

565. Hereafter the auditors whose duty it shall be to audit the accounts of the officers of any (borough,) township, (or poor district,) created or incorporated by any general or special law of this Commonwealth, shall meet annually, on the day following the day which has been or shall be fixed by law for the organization of (borough councils,) township supervisors, or commissioners of any township, (or directors of any poor district,) respectively, and shall forthwith proceed in the respective instances, to audit, settle, and adjust the accounts (of the burgess, members of the council, treasurer, street commissioner, and other officers, either appointed or elected, of the borough;) of the supervisors or commissioners, roadmasters and treasurer, of the township; (of the directors or overseers, treasurer, of the poor district,) and of the tax collectors of each of said municipalities (or districts;) and any such officer whose act or neglect shall have contributed to the financial loss of any municipality (or district) shall be surcharged with the amount of such loss.

Sec. 2, Act of May 20, 1913, P. L. 254, amending Section 1, Act of June 9, 1911, P. L. 865.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312. This section supplies section 102 of the Act of April 15, 1834, P. L. 537, except so far as it relates to a quorum,

section 1 of the Act of April 24, 1874, P. L. 112; section 1 of the Act of March 31, 1876, P. L. 12, and section 2 of the Act of June 4, 1879, P. L. 94.

565a. The auditors of each township, any two of whom duly convened shall be a quorum, (shall meet annually on the second Monday of April, and oftener if necessary, and shall audit, settle and adjust the accounts of the supervisors and treasurer of the township, and such other township officers as may by law be referred to them).

Sec. 102, Act of April 15, 1834, P. L. 537.

This section does not authorize the re-examination of the accounts of supervisors for any previous year: *Short v. Gilson*, 107 Pa., 315. The section seems to be entirely supplied by section 2 of the Act of May 20, 1913, P. L. 254, supra section 565, except as to what constitutes a quorum.

566. (Hereafter the auditors of the several townships and boroughs within this Commonwealth shall meet annually, on the first Monday of March, as to borough, township, and poor district accounts, and on the first Monday of June, as to school district accounts, and proceed to audit, settle, and adjust the accounts of the township supervisors, township commissioners, borough councils and other borough officers, school directors, directors and overseers of the poor, and the tax collectors and treasurers of townships, boroughs, poor districts, and school districts; and any officer whose action or neglect shall have contributed to the pecuniary loss of the municipality or district shall be charged by the auditors with the amount of such loss;) and for his services each auditor shall receive two dollars per diem for each day necessarily employed in the duties of his office, to be paid in each instance by the several (boroughs, townships, (poor districts, or school districts) in the auditing of the accounts of the officers of which the auditors' services shall be rendered.

Sec. 1, Act of May 3, 1909, P. L. 392.

The first part of this section enclosed in brackets, seems to be supplied by section 2, Act of May 20, 1913, P. L. 254, supra section 565. Section 1 of the Act of May 4, 1889, P. L. 86, fixed the pay of township auditors at two dollars per diem and provided that the act should not interfere with or change any local or special law where a larger amount than two dollars per day was authorized to be paid. The Act of May 3, 1909, P. L. 392, repealed all prior acts relating to the audit of the accounts of tax collectors: *South Union Township School District v. Moyer*, 38 Pa., C. C. 692.

567. The auditors shall cancel all orders and vouchers presented to them, which they shall find to have been paid, by writing the word "paid" on the face thereof.

Sec. 5, Act of May 3, 1909, P. L. 392.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

568. The auditors of every (borough,) township, (and poor district,) created or incorporated by any general or special law of this Commonwealth, shall file a report or statement of their said settlement and audit in the office of the clerk of the court of quarter sessions of the county within which such municipality or district shall be situated or within which shall be the greater portion of its population, within a period of ten days after the completion of said settlement and audit, which report shall contain an itemized list of all receipts, expenditures, and credits of the said several officers for the preceding fiscal year.

Sec. 3, Act of May 20, 1913, P. L. 254, amending Section 2, Act of June 9, 1911, P. L. 865.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

569. The said auditors shall complete such audit, settlement, and adjustment within as short a time as possible after the several times when they are required to meet in each year; and within ten days hereafter publish, by posting printed handbills in at least five public places in their respective townships or districts, an itemized report or statement of the receipts and expenditures of the said several officers for the preceding fiscal year; and also, within said period of ten days, file a copy of the same with the town clerk in their respective districts, and also with the clerk of the court of quarter sessions of the proper county, which shall be at all times subject to inspection by any citizen thereof: Provided, That when any two of said offices shall be exercised by the same person, only one statement shall be required: Also provided, That nothing in this act shall be construed to interfere with any present law, which requires annual statements of the receipts and expenditures of the (borough councils,) supervisors, (overseers of the poor, and school directors) to be advertised in the daily and weekly newspapers published in the respective localities.

Sec. 2, Act of May 3, 1909, P. L. 392.

This section is partly supplied by section 3, Act of May 20, 1913, P. L. 254, supra section 568. This section supplies section 103, Act of April 15, 1834, P. L. 537, and section 2 of the Act of April 24, 1874, P. L. 112. It was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312. The Act of May 3, 1909, P. L. 392 repealed all prior acts relating to the audit of the accounts of tax collectors: *South Union Township School District v. Moyer*, 38 Pa., C. C. 692.

570. The auditors of each township shall have the same power and authority to obtain the attendance before them of parties and witnesses, and the production of books and papers, and to administer oaths and affirmations, as are by law given to county auditors.

Sec. 105, Act of April 15, 1834, P. L. 537.



571. In case of any neglect or refusal to comply with the provisions of this act, the auditors so neglecting or refusing shall pay a penalty of one hundred dollars; to be recovered in the same manner as debts of like amount are, by the law, recoverable, by suit instituted in the name of the township, (borough, poor district, or school district,) upon the complaint of any taxpayer of the same; and the proceeds thereof to be paid into the treasury of the (respective township, (borough, poor district, or school district)).

Sec. 6, Act of May 3, 1909, P. L. 392.

This section supplies section 3 of the Act of April 24, 1874, P. L. 112.

It was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

572. After the passage of this act, it shall be lawful for any board of township (or borough) auditors, in case of a disagreement with any official or board of officials whose accounts they are required to audit, to employ an attorney. Such attorney shall not be employed until reasonable effort to reach an agreement has been made, and only after notice of their intention shall be given to the said official or board of officials. The compensation for such attorney shall be fixed by the board of auditors; but it shall in no case exceed the sum of ten dollars per day, nor shall the total compensation in any case in dispute be more than thirty dollars: Provided, That whenever an appeal is taken to the courts for decision, the court shall fix the additional compensation for said attorney.

Sec. 1, Act of April 27, 1909, P. L. 261.

573. The compensation for said attorney, as provided in section one of this act, shall be paid out of the fund whose settlement is in dispute, by a warrant drawn by said auditors upon the treasurer of such fund, immediately upon the final settlement of the account.

Sec. 2, Act of April 27, 1909, P. L. 261.

574. When the auditors of any (borough,) township, (or poor district) within this Commonwealth, shall have charged any person with any sum of money in their report of audit, any taxpayer of said (borough,) township, (or poor district) may proceed to enforce collection thereof, for the benefit of said (borough,) township, (or poor district,) from such person or his sureties, by action or executionary process, or both, upon filing in the proper court of common pleas a bond, with one or more sufficient sureties conditioned to indemnify, said (borough,) township, (or poor district) from all costs which may accrue in the proceeding undertaken by such taxpayer.

Sec. 1, Act of May 31, 1913, P. L. 394.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.



575. It shall be lawful for the (borough,) township, (or poor district,) or any taxpayer thereof on its behalf, or an officer or officers whose account shall be settled or audited, to appeal from the settlement or audit by the auditors to the court of common pleas of the proper county, within thirty days after such report or settlement shall have been filed in the office of the clerk of the court of quarter sessions; whereupon the court may direct an issue to determine the disputed questions of fact between the officers accounting and the (borough,) township, (or poor district:) Provided, That no appeal by such taxpayer or officer shall be received unless the applicant shall enter, into recognizance, with one or more sufficient sureties, sufficient to prosecute the appeal with effect, and to pay all costs accruing thereupon, in case, if the appellant be a taxpayer, he shall fail to obtain a final decision more favorable to the (borough,) township, (or poor district) than that awarded by the auditors; or, in case the appellant be an accounting officer, or officers, he or they shall fail to obtain a final decision more favorable to the officer or officers than that awarded by the auditors.

Sec. 4, Act of May 20, 1913, P. L. 254, amending Section 3, Act of June 9, 1911, P. L. 865.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312. This section supplies section 3 of the Act of May 3, 1909, P. L. 392; Section 104, Act of April 15, 1834, P. L. 537; Section 19, Act of 1851, P. L. 612; and Section 1, Act of May 1, 1876, P. L. 88. The president of the board of township supervisors has no right of his own initiative to appeal in right of the township from an auditor's settlement of township accounts: *Mt. Pleasant Twp. Audit*, 2 *West*. 95.

576. Hereafter it shall be lawful for any party to except to any ruling or decision of the court upon any question or point of law that may arise, and appeal may be taken therefrom to the superior or supreme court: Provided, That such exceptions and appeals shall be governed and regulated by the law now in force regulating exceptions and appeals to the supreme and superior courts in civil actions.

Sec. 4, Act of June 9, 1911, P. L. 865.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312. This section supplies the Act of May 11, 1901, P. L. 185, so far as it relates to townships, and also section 4 of the Act of May 3, 1909, P. L. 392. Section 4 of the Act of June 9, 1911, P. L. 865, regulating audits in boroughs, townships, poor and school districts, permits exceptions to any ruling or decision of the Court of Common Pleas on appeal. There is no authority to except to the form or substance of the auditors' report: *Dallas Borough Auditors' Report*, 23 *D. R.* 1068.

577. In any proceeding in the court of common pleas upon an appeal from a report of auditors of any (borough,) township, (or poor district,) the accounts of the officer or officers in question may be investigated de novo; but the figures and facts found and stated by the auditors in their report of audit shall be taken as prima facie correct as against any such officer, and the burden shall be upon each officer, whose accounts are in question, of establishing the credits to which he shall be entitled.

Sec. 1, Act of April 21, 1915, P. L. 162.

578. When more than one appeal from a report of such auditors shall have been taken, whether by the municipality or district, an officer or officers thereof, or by a taxpayer, or any or all of them, the court of common pleas shall, upon petition of any party interested, direct the several appeals to be disposed of in a single proceeding.

Sec. 2, Act of April 21, 1915, P. L. 162.

579. When in any (borough,) township, or (poor district,) within this Commonwealth, an appeal has been taken from the report of the auditors thereof, either by the (borough,) township, (or poor district,) or by any person or persons charged in such report with any sum of money, any taxpayer of said (borough,) township, (or poor district) may intervene in said appeal, and either prosecute the same, on its behalf, or defend it against the appeal of the person or persons charged, as aforesaid: Provided, That such taxpayer, at the time of intervention, shall file in the proper court of common pleas a bond, with one or more sufficient sureties, conditioned to indemnify the (borough,) township, (or poor district) against all costs which may accrue, by reason of such intervention, subsequently thereto.

Sec. 2, Act of May 31, 1913, P. L. 394.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

580. In case of any appeal from any report of auditors of any (borough,) township, (or poor district,) any person interested, by intervention or otherwise, may order the appeal upon the argument list of the court of common pleas of the proper county, and testimony and other evidence may be taken on behalf of any person interested, before any person authorized to administer an oath, upon rule for that purpose served upon the opposite party. After hearing argument, the court shall file its findings of fact and law, and enter judgment in accordance therewith; collection of the same to be enforced by the party prevailing, by any appropriate proceeding, executionary or otherwise: Provided, That, if the court after argument shall deem any question or questions of fact so doubtful, under the

evidence submitted, as to render it desirable that an issue should be directed as to such question or questions of fact, the court may direct such an issue.

Sec. 3, Act of May 31, 1913, P. L. 394.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

581. In all cases of appeal from the decision of township auditors, settling the accounts of township officers, to the court of common pleas of any county, the cost shall abide the event of the suit, as in other cases.

Sec. 6, Act of May 6, 1844, P. L. 564.

A taxpayer who appeals from an auditor's report is liable for costs, if he fails to obtain a decision more favorable to the township. But in such case, by virtue of this section, costs follow, as a matter of course, against the township, which has recourse against the appellant taxpayer on his recognizance: *Pittston Township School District v. Walsh*, 1 Kulp, 253.

582. The (assessor and) auditor, elected as hereinbefore provided, shall perform, respectively, the duties of their office as prescribed by existing laws.

Sec. 20, Act of April 28, 1899, P. L. 104.

The auditor referred to is the auditor elected in townships of the first class.

583. In addition to the duties now imposed upon the township auditors, they shall hereafter perform the duties hereinafter prescribed as fence viewers. That in addition to the oath now prescribed, to be taken by the auditors they shall annually be sworn or affirmed, to discharge their duties as such viewers faithfully and impartially.

Sec. 1, Act of March 11, 1842, P. L. 62.

The act of April 4, 1889, P. L. 27, repealing the fence act of 1700 is not inconsistent with this act and did not repeal it. It is suggested in *Scheidy v. Hucy*, 18 Dist. R. 967, that this act is superseded by the Act of April 14, 1905, P. L. 162, infra sections 591 and 592.

584. In case of the death, removal or resignation of any fence viewers and auditors, so elected, the judges of the court of the proper county, shall appoint a suitable person to fill the vacancy, for the unexpired term of the person whose place is vacant.

Sec. 2, Act of March 11, 1842, P. L. 62.

585. When any two persons shall improve lands adjacent to each other, or where any person shall enclose any land adjoining to another's land already fenced in, so that any part of the first person's fence becomes the partition fence between them, in both

these cases the charge of such division fence, so far as is enclosed on both sides, shall be equally borne and maintained by both parties.

Sec. 3, Act of March 11, 1842, P. L. 62.

586. On notice given the said viewers, shall within five days thereafter view and examine any line fence as aforesaid, and shall make out a certificate in writing, setting forth whether in their opinion, the fence of one (which) has been already built, is sufficient, and if not, what proportion of the expense of building a new or repairing the old fence, should be borne by each party, and in each case, they shall set forth the sum, which in their judgment each party ought to pay to the other, in case he shall repair or build his proportion of the fence, a copy of which certificate shall be delivered to each of the parties; and the said viewers shall receive the sum of one dollar for every day necessarily spent by them, in the discharge of their duties, which they shall be entitled to receive from the delinquent party, or in equal sums from each as they shall decide to be just.

Sec. 4, Act of March 11, 1842, P. L. 62.

587. If the party who shall be delinquent in making or repairing of any fence, shall not within ten days after a copy of the certificate of the viewers shall have been delivered to him, proceed to repair or build the said fence, and complete the same in a reasonable time, it shall be lawful for the parties aggrieved, to repair or build the said fence; and he may bring suit before any justice of the peace or alderman against the delinquent party, and recover as in other actions, for work, labor, service done, and materials found, and either party may appeal from the decision of the justice or alderman as in other cases.

Sec. 5, Act of March 11, 1842, P. L. 62.

588. The said viewers shall not be called out to view any fence, between the first day of November, and the first day of April, of the next year.

Sec. 6, Act of March 11, 1842, P. L. 62.

589. If any viewer shall neglect or refuse to perform any duty herein enjoined upon him, he shall pay for each, such neglect or refusal, the sum of three dollars, to be recovered by the party aggrieved as debts of a like amount are recoverable.

Sec. 7, Act of March 11, 1842, P. L. 62.

590. A majority of the viewers in each township, shall be a quorum, and shall have power to do all the duties herein assigned.

Sec. 8, Act of March 11, 1842, P. L. 62.



591. Whereas, From the different acts of Assembly in regard to fence laws in this Commonwealth, grave complications and litigations arise between owners of real estate as to the line of partition fences:

From and after the passage of this act, owners of improved and occupied land shall erect and maintain an equal part of all line or division fences between them, nor shall any such owner be relieved from liability under the provisions of this act except by the consent of the adjoining owner. And if any owner of such improved and occupied land shall fail or neglect to erect or maintain his, her or their share of such line or division fence, the party aggrieved shall notify the township (or borough) auditors, whose duty it shall be to examine such line or division fence, so complained of; and if they find said fence sufficient, the complainant shall pay the costs of their services, which shall be two dollars for each day's service; but if they find such fence insufficient, they shall so report to a justice of the peace, residing in the county where such fence is located, designating points and distances of such fence, whether a new fence is required or whether the old one can be repaired, and the probable costs of a new, or the repair of the old, fence; and said justice shall notify the delinquent owner of such improved and occupied land of the auditors' report, and that his part of said fence, as found by the auditors, be erected or repaired within forty days from the date of such notice; and if such notice be not complied with, the aggrieved party may cause said line or division fence to be erected or repaired, and the costs thereof collected from the delinquent owner of such improved and occupied land, as other debts are collected by law: Provided, however, That no owner of improved land shall be compelled to build or repair fence during the months of December, January, February, and March: And provided further, That nothing herein contained shall be construed to apply to railroad companies.

Sec. 1, Act of April 14, 1905, P. L. 162.

It is suggested in *Scheidy v. Huey*, 18 D. R. 967, that this act supercedes the Act of March 11, 1842, P. L. 62, *supra* sections 583-590.

592. Where an owner has improved up to and erected upon the line a division fence, and an adjoining owner subsequently improves and occupies up to said line, he shall become liable to the former for such part of the cost of said fence as is just and reasonable, taking into consideration the quantity of the fence, the length of time it had been erected, and its condition. And in case the parties fail to agree on the amount to be paid, the owner who erected said fence may complain to the auditors, aforesaid, who shall assess the amount which, in their opinion, the other party should pay; which amount, with costs, may be recovered as provided in section one of this act.

Sec. 2, Act of April 14, 1905, P. L. 162.

(g) Township Police. Provisions Relating to Both First and Second Class Townships.

593. Upon the petition of not less than twenty-five taxpayers of any township of any county of this Commonwealth, to the court of quarter sessions of said county, representing that the safety of the citizens and the security of property makes, in their opinion, necessary, the appointment of one or more deputy constables, to act as policemen, it shall be the duty of the court to consider said petition and, if satisfied of the reasonableness and propriety of said application, to make such appointment for such time and number as to the court may seem proper; and such deputy constables, so appointed shall severally possess and exercise all the powers of policemen of cities of this Commonwealth, in the several townships in which they shall be so appointed as aforesaid, and the keepers of jails, lock-ups or station-houses are required to receive all persons arrested by such policemen for the commission of any offense against the laws of this Commonwealth, within the township for which they shall be appointed as aforesaid.

Sec. 1, Act of May 9, 1889, P. L. 156.

594. Such deputy constables shall, when on duty severally wear a shield or badge with the words "township police" and the name of the township for which appointed inscribed thereon.

Sec. 2, Act of May 9, 1889, P. L. 156.

595. The said deputy constables shall be paid such compensation as may be approved by the court of quarter sessions, and may be discharged whenever the court appointing them shall be satisfied that their services are no longer required.

Sec. 3, Act of May 9, 1889, P. L. 156.

Townships are not liable for the services of a deputy constable appointed under the Act of May 9, 1889, P. L. 156, which provides for the appointment of deputy constables with the powers of policemen, because the act is unconstitutional, in that its subject is not clearly expressed in its title, and if constitutional, the township is not liable, because not expressly made so by the act: *Adams v. Swenden Township*, 9 D. R., 450. See also *Com. ex rel. Saunders v. Upper Providence Township*, 13 D. R. 736.

## XVI.

### ELECTION OF OFFICERS.

#### a) Provisions Relating to Both First and Second Class Townships.

(For the Election of Assessors and Tax Collector see  
Provisions Relating to Taxation.)

596. Hereafter when any new township shall be erected in any county of this commonwealth, it shall be lawful for the court of quarter sessions of the proper county, to authorize the citizens of said new township to hold an election for (justices of the peace, and) all other township officers, upon such notice as the court may direct.

Sec. 32, Act of April 5, 1849, P. L. 555.

#### (b) Provisions Relating Exclusively to First Class Townships.

597. In townships of the first class the following township officers shall be chosen by the qualified voters at the township election on the first Tuesday following the first Monday of November of each odd-numbered year:—

First. That at the next regular election for township officers after the passage of this act, or at the time that any township of the first class of this Commonwealth is organized, there shall be chosen by the qualified voters of the township one township commissioner from each election district of said township, and, in townships of the first class of this Commonwealth having five or less election districts, the number of commissioners of such township shall be five. The qualified voters of each election district shall elect one commissioner, who need not reside in the district for which he is elected, and, where there are less than five election districts, each district shall elect one commissioner as aforesaid; and the remaining number of township commissioners to which the said township is entitled shall be elected by vote of the qualified voters of the whole township. The said commissioners shall hold office for the term of two years, and shall each receive a salary of sixty dollars per year, payable quarterly out of the treasuries of the respective townships, which shall be in full and in lieu of all other compensation in the performance of any service, office, or duty imposed upon township commissioners of townships of the first class: Provided, however, That a proportionate amount shall be deducted from the salary of any township commissioner for each and every regular meeting of the board which he

shall fail or neglect to attend: And provided further, That no township commissioner shall be eligible to any other township office.

Sec. 1, Act of June 1, 1915, P. L. 684, amending part of section 4 of the Act of April 28, 1899, P. L. 104.

This section supplies sections 1 and 2 of the Act of June 3, 1911, P. L. 628; sections 1, 2, 3 and 4 of the Act of April 27, 1909, P. L. 187, and section 5 of the Act of April 28, 1899, P. L. 104.

598. The notice or notices of any primary election, or nominating caucus, convention, or meeting, held for the purpose of nominating candidates for the office of township commissioner, and the notice or notices of any election of township commissioners, shall designate for what election district or districts of the said township each commissioner is to be nominated or elected, as the case may be; and in case any one or more of the township commissioners is to be elected by vote of the qualified electors of the township at large, the said notice or notices shall so state; and the ballots to be cast at any election of township commissioners shall designate, under an appropriate heading, the candidate or candidates for the office of township commissioner for whom the qualified electors of such election district or districts are entitled to cast their ballots; and in case any one or more of the said township commissioners are to be elected at any election by the qualified electors of the township at large, then the ballots to be cast at such election shall designate, under an appropriate heading, which candidate or candidates for the office of township commissioner are to be elected by vote of the qualified electors of the township at large.

Sec. 5, Act of April 27, 1909, P. L. 187.

599. All acts or parts of acts inconsistent herewith be and the same are hereby repealed, but nothing in this act contained shall be construed to prevent the division of election districts by proper proceedings, as is now or hereafter may be permitted by the laws of this Commonwealth.

Sec. 6, Act of April 27, 1909, P. L. 187.

600. Second. In the first year of its organization and in every (third) year thereafter, a township treasurer, who shall hold office for the term of (three) years.

(Third. In the year in which the term of office expires of the township assessor who may be in office at the time of its organization, and in every (third) year thereafter, a township assessor, who shall hold office for the term of three years, as provided by existing laws.)

Fourth. (Annually,) a township auditor, who shall hold office for a term of (three) years, as provided by existing laws:



The official term of the above-named officers shall commence on the first Monday in (March) and continue until the election and qualification of their successors.

Whenever the form of government provided for by this act for townships of the first class becomes operative in any township, the office of supervisor of highways shall cease to exist in such township.

Part of Sec. 4, Act of April 28, 1899, P. L. 104.

The official term of the above named officers commences on the first Monday of January in an even numbered year. The terms of all these officers have been lengthened one year. All of these officers are elected at the municipal election in odd numbered years. The auditors instead of being elected annually, will be elected as follows: At one municipal election one auditor for a term of four years, and at the subsequent municipal election two for a term of four years, or vice versa. See the schedule to the constitutional amendments of November 2, 1909, and the Act of March 2, 1911, P. L. 8.

### (c) Provisions Relating Exclusively to Second Class Townships.

601. The general supervision of road affairs in every township of the second class shall be in the hands of three qualified electors of such township, who shall be styled township supervisors, instead of road supervisors as under former laws, and who shall be elected at the municipal elections in the odd-numbered years, for a term of six years. The term of all supervisors elected in the years one thousand nine hundred and nine and one thousand nine hundred and ten shall expire on the first Monday of December, one thousand nine hundred and thirteen; and the term of all supervisors elected in the year one thousand nine hundred and eleven, for the short or long term, respectively (if two or more vacancies were filled), shall expire on the first Monday of December, one thousand nine hundred and thirteen, or one thousand nine hundred and fifteen, as the case may be. At the municipal election in the year one thousand nine hundred and thirteen, one supervisor shall be elected for a full term of six years, and one supervisor for a term of four years, and then, at each municipal election thereafter, one supervisor shall be elected for the full term of six years.

In case two or more persons were, in the year one thousand nine hundred and eleven, elected supervisors, and the length of the respective long and short terms were not designated, the said supervisors shall, after the passage of this act, determine by lot the length of the said respective terms, so as to harmonize the same with the provisions of this section.

Sec. 4, Act of July 22, 1913, P. L. 915.

Under section 81 of the Act of April 15, 1834, P. L. 537, three supervisors were to be elected in each township, one annually for a term of three years. By section 8 of the Act of February 23, 1835,

P. L. 46, this eighty-first section of the said Act of 1834, was repealed as to the election of supervisors, except in the counties of Erie, Franklin, Wayne, Venango, Warren, Susquehanna, Bradford, Tioga and Luzerne, and it was provided that in those counties as to which the eighty-first section of the Act of 1834 was repealed, two supervisors should be elected annually. By section one of the Act of June 23, 1897, P. L. 194, every township in the Commonwealth elected one road supervisor annually to serve for a term of three years. This Act of 1897 was supplied by the Act of April 12, 1905, P. L. 142, which also provided for the election of one road supervisor annually for a term of three years. Next followed the Act of June 14, 1911, P. L. 942, section one of which provided for the election of three township supervisors instead of road supervisors, who should hold office for a term of four years. This section of the Act of 1911 was in turn supplied by section 4 of the Act of July 22, 1913, P. L. 915 *supra*. It seems that section 81 of the Act of April 15, 1834, P. L. 537, is no longer in force in the counties named in section 8 of the Act of February 28, 1835, P. L. 46, and that the Act of 1913 repeals local and special, as well as general statutes inconsistent with its provisions. See *opinion of Attorney General in 9, Dauphin Co., 8*, holding the Act of April 12, 1905, P. L. 142, repeals all acts inconsistent, local and special as well as general.

602. It shall be lawful for the electors of every township (annually,) to elect the following township officers, to wit:

Three township auditors to be elected for the same term and in the same manner as supervisors.

Part of Sec. 81, Act of April 15, 1834, P. L. 537.

The remaining part of this section so far as it relates to the subject covered by this work, is supplied by subsequent legislation.

Quære: Whether, under the language of this section township auditors are elected for the term provided in section 81 of the Act of 1834, as affected by the constitutional amendments, which section *inter alia* provides "Three supervisors to be elected in 1835, one to serve one year, one to serve two years and one to serve three years, and thereafter one each year, to serve for a term of three years," or for the term and in the manner provided for township supervisors under section 4 of the Act of July 22, 1913, P. L. 915, *supra* section 601? See also note on section 427 *supra*.

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## XVII.

### VACANCIES IN OFFICE.

(a) Provisions Relating to Both First and Second Class Townships.

603. In case of the death, removal or resignation of any fence viewers and auditors, so elected, the judges of the court of the proper

county, shall appoint a suitable person to fill the vacancy, for the unexpired term of the person whose place is vacant.

Sec. 2, Act of March 11, 1842, P. L. 62.

A person appointed under this section to fill a vacancy, holds for the balance of the unexpired term: *Jayne v. Smith*, 9 Pa., C. C. 494.

604. If the electors of any township shall fail to choose any township officer, other than assessor, assistant assessor or constable, or if any person elected to such office, shall neglect or refuse to serve therein, or if any vacancy shall happen in such office, by death or otherwise, it shall be lawful for the court of quarter sessions of the proper county, to appoint a suitable person to fill such office, until the next annual election.

Sec. 83, Act of April 15, 1834, P. L. 537.

See also the Act of March 22, 1907, P. L. 27, *supra* sections 505 and 506.

#### (b) Provisions Relating Exclusively to First Class Townships.

605. Each board of township commissioners, of townships of the first class, shall have power to fill any vacancy which may occur in the board, or in the office of township treasurer, by death, resignation, removal from the township, or otherwise; the person so appointed to hold office until the next regular election for township officers.

Sec. 1, Act of April 23, 1903, P. L. 267.

See section 3, Act of June 3, 1911, P. L. 628, *infra* section 607.

606. In the event of a vacancy, caused by death, resignation or otherwise, in the office of commissioner or treasurer in the townships of the first class of this Commonwealth, the court of quarter sessions of the county wherein such township, wherein a vacancy occurs, is located, shall fill the same for the unexpired term by the appointment of a qualified elector of said township, upon the petition of twenty or more qualified voters thereof, setting forth such vacancy and the term thereof: Provided, however, That such appointment shall not be made until at least ten days' notice of the filing of such petition shall be given, by putting up ten or more notices thereof in the most public or conspicuous places in said township.

Sec. 1, Act of April 15, 1903, P. L. 199.

See section 4, Act of June 3, 1911, P. L. 628, *infra* section 608, which seems to supply this section so far as relates to the filling of a vacancy in the office of township commissioner.

607. Each board of township commissioners of townships of the first class of this Commonwealth shall have power to fill any vacancy which may occur in the office of township treasurer, by death, resignation, removal from township, or otherwise; the person so selected as

such township treasurer shall hold office for the unexpired term of the person whose place he is appointed to fill.

Sec. 3, Act of June 3, 1911, P. L. 628.

See section 1, Act of April 23, 1903, P. L. 267, *supra* section 603.

608. Where a vacancy occurs in the office of township commissioner, by reason of death, resignation, or removal from the township, or otherwise, the court of quarter sessions of the county of which the said township is a part, upon the petition of at least ten qualified voters of the district in which the vacancy occurs, may appoint a suitable person, being a qualified voter of the said township, to fill the said vacancy. If such petition is not presented to said court within thirty (30) days after such vacancy occurs, the board of township commissioners of the said township may appoint a suitable person, being a qualified voter of the said township, to fill said vacancy. In either event, the person so appointed shall hold office for the unexpired term of the person whose place he is appointed to fill.

Sec. 4, Act of June 3, 1911, P. L. 628.

See section 1, Act of April 15, 1903, P. L. 199, *supra* section 606.

#### (c) Provisions Relating Exclusively to Second Class Townships.

609. In all cases where a vacancy occurs in the board of township supervisors, from any cause, and within a reasonable time thereafter, no petition for the appointment of a person to fill such vacancy has been presented to the court, as hereinafter provided for, the two remaining supervisors may appoint a successor to fill the office for the unexpired term, and shall certify his appointment to the clerk of courts of the county within fifteen days thereafter. In the event of a petition signed by a supervisor and not less than ten voters who are owners of real estate in the township, being presented to the court, or in the event of several petitions being presented the court of quarter sessions of the proper county shall appoint a person or persons to fill the vacancy or vacancies for the unexpired term or terms.

Sec. 16, Act of July 22, 1913, P. L. 915.

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### XVIII.

#### PARKS, SHADE TREES AND FORESTS.

##### (a) Parks and Playgrounds.

##### (1) Provisions Relating Exclusively to First Class Townships.

610. It shall be lawful for, and the right and power are hereby conferred upon, the townships of the first class (and boroughs) of this



Commonwealth, to enter upon, take, use, and appropriate by the right of eminent domain, and to acquire by gift, devise, purchase, lease, and otherwise, private property, for the purposes of making, enlarging, extending, and maintaining public parks, parkways, and playgrounds: Provided, No appropriation or appropriations by right of eminent domain, lease or leases, purchase or purchases, shall be made by any such township (or borough) whereby it shall, within any period of three years, obligate itself to pay in the aggregate, any money or moneys in excess of one and one-half mills on the dollar on the valuation assessed on all property, offices, professions, and persons, in such township (or borough), upon which county taxes are rated and levied, without the consent of a majority of the qualified electors obtained at an election as hereinafter provided: And provided further, That no such municipality shall have power to exercise the right of eminent domain for the appropriation of any land which is not within the territorial limits thereof.

Sec. 1, Act of May 20, 1913, P. L. 257, amending Section 1 of the Act of May 3, 1909, P. L. 401.

This section is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

611. Whenever any such township (or borough) shall by ordinance provide for taking, using, and appropriating by right of eminent domain, or purchasing or leasing any private property for the purposes aforesaid, and the value of such property or the price of the rental thereof, as the case may be, shall alone, or when added to the amount of liability incurred for the purposes aforesaid, within the preceding three years, exceed the amount of three thousand dollars, the corporate authorities shall cause the question of such taking and appropriating, purchasing or leasing, to be submitted to the qualified electors of the township (or borough) at the municipal or general election next occurring after the expiration of forty days from the date of such ordinance. The corporate authorities of such township (or borough) shall give public notice of the proposed submission of such question, by weekly advertisements in the newspapers, not exceeding three in such township (or borough,) for four weeks next preceding the day of the election; and, if no newspaper be published therein, by at least twenty printed handbills, posted in the most public parts thereof, at least twenty-one days before the day of such election. For the purpose of having such question appear upon the ballot, the corporate authorities of such township (or borough) shall certify the question to the county commissioners, at least twenty-one days before the day of the election. The question may be stated substantially as follows:—

“Shall the township [ (or the borough) ] of \_\_\_\_\_ acquire by purchase or condemnation, or both, at a price and cost not

exceeding \_\_\_\_\_ dollars (or by lease for not more than \_\_\_\_\_ years, at an annual rental of not more than \_\_\_\_\_ dollars), property for the purpose of making (or of enlarging or of extending) public parks, parkways and playgrounds, within the locality bounded by \_\_\_\_\_.”

The corporate authorities may, however, at their discretion, omit the designation of the locality. The result of the vote on such question shall be ascertained and certified in the same manner as the vote on the election of officers named on the same ballots. No such question, which shall have been determined, negatively at any such election, shall be again submitted within one year.

Sec. 2, Act of May 3, 1909, P. L. 401.

This section is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

This section is in some respects inconsistent with the preceding section. Section one of this act in its original form authorized the appropriation of private property for parks and playgrounds, but, provided that no condemnation, lease or purchase should be made whereby a township should, within a period of three years, obligate itself to pay more than three thousand dollars, without the consent of the electors first obtained. This section was amended by the Act of May 20, 1913, P. L. 257, supra section 610, whereby the words “more than \$3,000” were changed to “more than one and one-half per centum of the value of property, etc.” The legislature obviously overlooked the fact that corresponding change should have been made in section two of the Act of 1909 and permitted the limitation of three thousand dollars to remain.

612. It shall be lawful for, and the right and power are hereby conferred upon, such townships (and boroughs) to improve, maintain, and regulate all public parks, parkways, and playgrounds within their respective territorial limits.

Sec. 3, Act of May 3, 1909, P. L. 401.

This section is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

613. The taking, using, and appropriating by the right of eminent domain of private property, for the purpose of making, enlarging, extending, and maintaining public parks, parkways and playgrounds, is hereby declared to be taking, using, and appropriating such private property for public use; and for all damage done or suffered by, and compensation which shall accrue to, the owner or owners of such property, by reason of the taking, appropriating, and using of the same for the purposes aforesaid, the funds of the township (or borough,) which may be raised by taxation, shall be pledged and deemed as security.

Sec. 4, Act of May 3, 1909, P. L. 401.

This section is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

614. Wherever any of said townships (or boroughs,) in the exercise of the right hereinbefore conferred, shall acquire, take, use, or appropriate private property for public park, parkway or playground purposes, and cannot agree with the owner or owners, lessee or lessees, of such private property for the compensation for the property appropriated and the damages done; or when, by reason of the absence or legal incapacity of any such owner or owners, lessee or lessees, no such compensation can be agreed upon; any court of common pleas of the county in which the property so taken, used, and appropriated is situate, or any law judge thereof in vacation, on application thereto by such township (or borough), or any person interested in such land and property, shall appoint three discreet and disinterested freeholders as viewers, and appoint a time, not less than twenty nor more than thirty days thereafter, when said viewers shall meet upon the property and view the same and the premises affected thereby. The said viewers shall give at least ten days notice of the time and place of their first meeting, to the owners of said property, by writing served upon them in the manner provided by law for the service of summons in personal actions, if they reside within the county in which such township (or borough) is located, otherwise by handbills posted upon the premises, or by such other notice as the court shall direct.

Sec. 5, Act of May 3, 1909, P. L. 401.

This section is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

The viewers provided by this act are appointed from the county board of viewers established by the Act of June 23, 1911, P. L. 1123.

615. The said viewers, having been duly sworn or affirmed faithfully, justly, and impartially to decide and true report to make concerning all matters and things to be submitted to them, in relation to which they are authorized to inquire under the provisions of this act, and having viewed the premises or examined the property, shall hear all parties interested and their witnesses; and, having due regard to the advantages and disadvantages, shall estimate and determine the damages for property taken, used, or appropriated, and to whom the same are payable; and, having so estimated and determined the damages, they shall prepare a schedule thereof, and give notice, in the manner above provided, to the parties interested, of a time not less than ten days thereafter, and of a place where said viewers will meet and exhibit said schedule and hear all exceptions thereto and evidence. After making whatever changes are deemed necessary, the said viewers shall make report to the court, showing the damages allowed, if any, and to whom payable, and file therewith a plan showing the properties taken, used, and appropriated.

Sec. 6, Act of May 3, 1909, P. L. 401.

This section is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.



616. When said report is filed, notice thereof shall be given within ten days by publication once, in a newspaper published in such (borough or) township, if any; otherwise in a newspaper published in the county-seat of such county. Said notice shall state the date of filing the report, and shall contain a schedule of the damages shown therein, and shall further state that, unless exceptions are filed within thirty days from the date of filing, the said report will be confirmed absolutely.

Sec. 7, Act of May 3, 1909, P. L. 401.

This section is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

617. Upon the report of said viewers being filed in said court, any party may, within thirty days thereafter, file exceptions to the same; and the court shall have power to confirm said report, or to modify, change, or otherwise correct the same, or refer the same back to the same or new viewers, with like power as to their report.

When said report is first filed in court, the prothonotary shall mark the same confirmed nisi, and in case no exceptions are filed thereto, within said thirty days, he shall enter a decree (as of course) that the said report is confirmed absolutely. If exceptions are filed which affect the entire report, the same shall not be confirmed absolutely, as to any part thereof until the said exceptions have been finally disposed of by the court; but when exceptions are filed that only go to or affect some particular assessment of damages, and which in the consideration and final disposal thereof will not affect the assessments made in favor of other parties, in such case, and in cases where any appeal or appeals may have been taken to the court of common pleas, with demand for trial by jury, by less than all of the parties having a right to take such appeals, the court may confirm all such assessments as to which no exceptions have been filed or appeal taken.

Sec. 8, Act of May 3, 1909, P. L. 401.

This section is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

618. Within thirty days from the filing of any report in court, any party whose property is so taken, used, or appropriated may appeal to the court of common pleas, and demand a trial by jury; and in case the party appellant does not obtain a verdict more favorable than was the final report of viewers, the said appellant shall not recover any costs on the appeal.

Sec. 9, Act of May 3, 1909, P. L. 401.

This section is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.



619. The final confirmation of the report of the viewers shall operate as a judgment against the township (or borough,) in favor of the parties to whom damages have been awarded by the report, or by so much of the report as is so confirmed for the amount of such damages, with interest from the date of filing the report. From such confirmation of the viewers' report, and from final judgment on the verdict in cases of trial by jury, either party may have an appeal to the superior court or supreme court, as in other cases.

Sec. 10, Act of May 3, 1909, P. L. 401.

This section is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

620. The powers and duties of the said viewers may be exercised and performed by any two of them. They shall have power to administer oaths, and to adjourn their hearings from day to day as they may find necessary. The notices required to be given by the viewers may be served by any one authorized by them to make such service. The said court of common pleas shall have power to order what notices shall be given in connection with any part of said proceedings, and make all and such orders as it may deem requisite, and may, by rule or otherwise, prescribe the form of the pleadings. The viewers provided for in the foregoing sections may be appointed before or at any time after the entry upon, taking, or appropriation of any property under this act. The costs incurred in the proceedings aforesaid shall be defrayed by such township (or borough;) and each of said viewers shall be entitled to a sum not exceeding five dollars per day, or such sum as shall be decided upon by the proper court, not exceeding five dollars per day, for every day necessarily employed in performance of the duties herein prescribed.

Sec. 11, Act of May 3, 1909, P. L. 401.

This section is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

621. In case any such township (or borough) shall repeal any ordinance passed, or discontinue any proceeding taken, providing for the taking and appropriation of any property for the purposes aforesaid, prior to the entry upon and taking of, or injury to, such property, and within thirty days after the filing of the report of viewers assessing damages, the said township (or borough) shall not thereafter be liable to pay any damages which have been or might have been assessed; but all costs upon any proceeding had thereon shall be paid by such township (or borough), together with any actual damage, loss, or injury sustained by reason of such proceedings.

Sec. 12, Act of May 3, 1909, P. L. 401.

This section is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

(b) Shade Trees.

(1) Provisions Relating Exclusively to First Class Townships.

622. In townships of the first class, (boroughs, and cities) of the Commonwealth of Pennsylvania there may be appointed, in the manner hereinafter provided, a Commission of three freeholders, to be known and designated as the Shadetree Commission of the said township, (borough, or city) who shall serve without compensation, and who shall have exclusive and absolute custody and control of, and power to plant, set out, remove, maintain, protect and care for, shade-trees, on any of the public highways of the said townships, (boroughs, and cities,) the cost thereof to be provided for in the manner hereinafter stated: Provided, That in townships, (boroughs, or cities) in which a Commission for the care of public parks shall have been created, said Commission shall, upon the acceptance of this act as provided in section two, be charged with the duties of the Commission as above provided, and shall, for that purpose, be possessed of all the powers herein mentioned and granted.

Sec. 1, Act of May 31, 1907, P. L. 349.

This section is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

623. The commissioners of any township of the first class, (or the councils of any borough or city,) in the State of Pennsylvania, may by majority vote in the case of the commissioners, (or by joint resolution in the case of the councils,) accept the provisions of this act; and when such majority vote (or joint resolution) shall have been duly passed and approved, and such Shade-tree Commissioners appointed, or, in their stead, the duties and powers herein provided have been devolved upon an existing park commission, then, from that time and in that event this act and all its provisions shall be in full force and application in such township of the first class, (borough, or city,) so accepting; and such commissioners shall be appointed, for terms of three, four, and five years, respectively, and, on the expiration of any term, the new appointment shall be for five years, and any vacancies shall be filled for the unexpired term only; and in townships of the first class the said appointment shall be made by the commissioners thereof; (and in boroughs, by the chief burgess, and in cities, by the mayor thereof: Provided, That in cities where a Commission exists for the care of public parks, the term and appointment of such Commission shall not be changed by this act, but shall be and remain as provided by the act of Assembly, and by the ordinance of councils creating such Commission for the care and maintenance of public parks. And such Shade-tree Commission shall, twice in every year, report in full its transactions and expenditures for the municipal fiscal year, then last ended, to the authority under and by

which it was appointed: Provided, That an existing park commission, acting under this enactment, may embody its report in its regular report to the councils, as by law or ordinance provided.)

Sec. 2, Act of May 31, 1907, P. L. 349.

This section is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

624. When such shade-tree commissioners, or park commissioners so acting, shall propose the setting out or planting or removing of any shade-trees, or the material changing of the same in any highway, they shall give public notice of the time and place appointed for the meeting at which such contemplated work is to be considered, specifying in detail the highways, or portion thereof, upon which trees are proposed to be planted, removed, or changed, in one or more—not exceeding two in all—of the newspapers published in said township, (borough, or city,) once each week for at least two weeks, prior to the date of said meeting.

Sec. 3, Act of May 31, 1907, P. L. 349.

This section is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

625. The cost of planting, transplanting, or removing any trees in any highway, and of suitable guards, curbing, or grating for the protection thereof, when necessary, and of the proper replacing of any pavement or sidewalk necessarily disturbed in the doing of such work, shall be borne by the owner of the real estate in front of which such trees are planted, set out, or removed; and the cost thereof as to each tract of real estate shall be certified by the commissioners to the township commissioners, (or to the presidents of the councils in boroughs and cities,) and also to the person having charge of the collection of taxes for the said township, (borough, or city;) and upon the filing of said certificates, the amount of the cost of such improvement, of which notice shall also be given to each property owner involved, accompanied with a copy of the aforesaid certificates, together with a notice of the time and place for payment, shall be and become a lien upon said real estate, in front of which said trees have been planted, set out, or removed; said lien to be collectible, if not paid in accordance with notice as herein provided, in the same manner as other liens for taxes are now collectible against the property involved.

Sec. 4, Act of May 31, 1907, P. L. 349.

This section is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

626. The cost and expense of caring for said trees after having been planted or set out, and the expense of publishing the notices provided for in section three, shall be borne and paid for by a general



tax, to be levied annually in the manner that taxes for township, (borough, and city) purposes are now levied in such townships of the first class, (borough, or cities;) such tax not to exceed the sum of one-tenth of one mill on the dollar on the assessed valuation of the property in such townships of the first class, (boroughs, or cities;) and the needed amount shall each year, in due time, be certified by the shade-tree commissioners to the proper authorities charged with the assessment of taxes in said townships, (boroughs, or cities,) to be assessed and paid, as other taxes are assessed and paid, and to be drawn against as required by said commissioners, in the same manner as moneys appropriated for township, (borough, or city) purposes, are now drawn against in said townships, (boroughs, or cities;) Provided, That the commissioners of any township of the first class, (and the councils of any borough or city,) accepting the provisions of this act, may provide for the expense of the maintenance of trees on highways, in accordance with the provisions of this section by actual appropriation, equal to the amount certified to be required by the said Commission, in lieu of the specific assessment above authorized.

Sec. 5, Act of May 31, 1907, P. L. 349.

This section is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

627. The Commission, under which the provisions of this act shall be carried out, in any township of the first class, (borough, or city,) shall have power to employ and pay such superintendents, engineers, foresters, tree-wardens, or other assistants, as the proper performance of the duties devolving upon it shall require; and to make, publish and enforce regulations for the care of, and to prevent injury, to, the trees on the highways of any township, (borough, or city,) accepting the provisions of this act; and to assess suitable fines and penalties for violations of this act, provided such regulations shall have been published at least twice in one or more, not exceeding two, newspapers of the township, (borough, or city,) involved, after having been submitted to and being approved by the commissioners of the township of the first class, (or the councils of the borough or city affected;) and such fines and penalties, so assessed for violations of this act, shall become liens upon the real property of the offender, and be collectible by the constituted authorities as liens for taxes upon real property are now collected.

Sec. 6, Act of May 31, 1907, P. L. 349.

This section is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

628. All the moneys due and collected from fines or penalties or assessments, in consequence of the acts of said Shade-tree Commission in enforcing this act, shall be paid to the treasurers of the town-



ships, (boroughs, and cities) accepting its provisions, and shall be placed to the credit of said Commission, subject to be drawn upon by the said Commission for the purposes of this act.

Sec. 7, Act of May 31, 1907, P. L. 349.

This section is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

### (c) Forests.

#### (1) Provisions Relating to Both First and Second Class Townships.

629. The Department of Forestry is authorized to enter into agreements for the prevention and suppression of forest fires with (county,) township, (municipal, and private) agencies owning or controlling woodlots, forests, or wild lands, or whose activities in whole or in part are directed toward the prevention and suppression of forest fires. The department is authorized to expend from its general forest fire appropriation, for such protection and preventive purposes as it deems effective, a sum of money equal in amount to the amount which shall be expended by such agencies in accordance with such agreements. All expenditures must first be presented to the Department of Forestry in monthly statements, in form and manner prescribed for the payment of any sum from the forest fire appropriation. The Commissioner of Forestry shall audit the same and transmit them to the Auditor General, who shall then draw his warrant for one-half of the amount of expenditures approved by the Commissioner of Forestry.

Sec. 1, Act of June 4, 1915, P. L. 815.

630. Every (county,) township, (municipal or private agency) working under agreement with the department, in accordance with this act, shall render to the department, at the end of each calendar year, a report setting forth a complete itemized statement of expenditures made with a view to the prevention and suppression of forest fires, and stating such other information as the department may request. The financial statement and facts relating thereto shall be accompanied by an affidavit subscribed to by the person authorized to make the report.

Sec. 2, Act of June 4, 1915, P. L. 815.

#### (2) Provisions Relating Exclusively to First Class Townships.

631. All townships of the first class, (boroughs, and cities) of this Commonwealth are hereby empowered to acquire, by purchase, gift, or lease, and hold as the property of the municipality, tracts of land at present covered with forest or tree growth, or suitable for the growth of trees, and to administer the same, under the direction

of the Commissioner of Forestry of the Commonwealth of Pennsylvania, in accordance with the practices and principles of scientific forestry, for the benefit and advantage of the said municipalities. Such tracts may be of any size suitable for the purpose, and may be located either within, adjacent to, or at a distance from the corporate limits of the municipality purchasing the same: Provided, That it shall be requisite for the commissioners, (burgess, or mayor) of any municipality, availing itself of the provisions of this act, to submit to the Commissioner of Forestry, and secure his approval of, the area and location of any lands proposed to be acquired for the purposes of municipal forests, previous to the passage of the ordinance provided for in section two.

Sec. 1, Act of April 22, 1909, P. L. 124.

This Act is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

632. Whenever the township commissioners of any township of the first class, (or the councils of any borough or city,) shall deem it expedient for the municipality to acquire any such lands for the purposes of a municipal forest, they shall so declare in an ordinance, wherein shall be set forth all facts and conditions relating to the proposed action; which said proposed ordinance, prior to its passage, shall be duly advertised once a week for three weeks, and after its passage and approval, in accordance with existing law. All money necessary for the purchase of such tracts shall be appropriated in like manner, as is now done, under existing law, for municipal purposes; and such funds may be provided out of current revenue, or by the proceeds of a sale of bonds in accordance with existing law.

Sec. 2, Act of April 22, 1909, P. L. 124.

This Act is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

633. Upon the acquisition of any municipal forests or of lands suitable for such, under this act, the proper authorities shall notify the Commissioner of Forestry, who shall make such rules for the government and proper administration of the same as may be necessary. The municipal authorities shall thereupon publish such rules, declare the uses of the forest in accordance with the true intent of this act, and make such provision for its administration, maintenance, protection, and development as shall be necessary or expedient.

Sec. 3, Act of April 22, 1909, P. L. 124.

This Act is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

634. All moneys necessary to be expended, from time to time, for the administration, maintenance, protection, and development of said forest, shall be appropriated and applied as is now done, under

existing law, for municipal purposes; and all revenue and emoluments arising from said forest shall be paid into the municipal treasury, to be used for general municipal purposes.

Sec. 4, Act of April 22, 1909, P. L. 124.

This Act is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

635. The municipal forest may be used by the people for general outing or recreation grounds, subject to the rules governing its administration for the purpose of a municipal forest, in which the major idea shall be the sale of forest products for producing a continuing municipal revenue.

Sec. 5, Act of April 22, 1909, P. L. 124.

This Act is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

636. The alienation of a municipal forest, or any part thereof, shall be made only in the manner prescribed herein for the purchase of the same; to wit, by ordinance duly advertised before and after passage, but such ordinance shall not be effective in legalizing such alienation until after it shall have been approved by a majority vote of the people at the next ensuing election.

Sec. 6, Act of April 22, 1909, P. L. 124.

This Act is repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

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## XIX.

### HEALTH.

#### (a) Provisions Relating to Both First and Second Class Townships.

637. If any person shall come out of any city, borough, township, or district, in this Commonwealth, into any (other city, borough,) township, (or district,) and shall happen to fall sick of any contagious or infectious disease before he shall have gained a settlement therein, the (bureau of health,) board of health, or board of school directors of such (city, borough, or) township, (or district,) shall, as soon as conveniently may be, give notice to the bureau of health, board of health, or board of school directors of the city, borough, township, or district, as the case may be, where such sick person had last gained a settlement, or to one of them, the name, circumstance, and condition of such sick person; and if the bureau of health, board of health, or board of school directors, to whom such notice shall be given, shall

neglect or refuse to repay the moneys necessarily expended for the use of such sick person and to take charge of relieving and maintaining him, or shall, on request made, refuse or neglect to pay the money expended in maintaining such sick person, in every such case it shall be the duty of the court of quarter sessions of the county where such sick person was last settled, upon complaint to them made, to compel the payment by such bureau of health or board of school directors or board of health of all such sums of money as were necessarily expended for such purposes, in the manner directed by law in the case of a judgment obtained against overseers of poor: Provided, That in all cases the court of quarter sessions of the proper county shall have the right and authority to supervise, correct, and amend or allow, the charges or expenses received, or any items thereof.

Sec. 1, Act of May 1, 1909, P. L. 307.

In view of the fact that the Act of April 11, 1899, P. L. 38, empowering school directors to act as boards of health in townships, was repealed by the Act of May 14, 1909, P. L. 837, it is doubtful if the provisions of the above section so far as it relates to school directors is any longer good law.

638. All persons falling sick of any contagious or infectious disease, excepting those entitled to relief under the existing poor-laws, shall bear and pay all expenses incident to such sickness, except expense of quarantine; and in case any (bureau of health,) board of health, or board of school directors have made payment, under section one of this act, then they shall recover any money so expended, in the same manner as debts of like amount are now by law collected: Provided, The expense of the care and maintenance of the poor person sick with a contagious or infectious disease, shall be paid out of the funds at the disposal of said bureaus of health, board of health, or board of school directors.

Sec. 2, Act of May 1, 1909, P. L. 307.

See note to section one of this act, *supra* section 637.

639. A settlement may be gained in any district as follows:—

1. By any person who shall come to inhabit in the same, and who shall, for himself and on his own account, execute any public office legally placed therein during one whole year.

2. By any person who shall be charged with and pay the proportion of any public taxes or levies for one year.

3. By any person who shall bona fide take a lease of any real estate of the yearly value of ten dollars, and shall dwell upon the same for one whole year, and pay the said rent.

4. By any person who shall become seized of any freehold estate within such district, and who shall dwell upon the same for one whole year.



5. By any unmarried person, not having a child, who shall be lawfully bound or hired as a servant within such district, and shall continue in such service during one whole year.

Sec. 3, Act of May 1, 1909, P. L. 307.

640. Every married woman shall be deemed, during coverture and after her husband's death, to be settled in the place where he was last settled; but, if he shall have no known settlement, then she shall be deemed, whether he be living or dead, to be settled in the place where she was last settled before her marriage.

Sec. 4, Act of May 1, 1909, P. L. 307.

641. Every illegitimate minor child shall be deemed to be settled in the place where the mother was legally settled at the time of the birth of such child.

Sec. 5, Act of May 1, 1909, P. L. 307.

(b) Provisions Relating Exclusively to First Class Townships.

642. A board of health shall be established and maintained in each (borough and) township of the first class in this Commonwealth, within three months after the passage of this act.

Sec. 1, Act of June 12, 1913, P. L. 471.

643. The board of health shall be composed of five members, at least one of whom shall be a reputable physician of not less than two years experience in the practice of his profession. The members of the board of health shall be appointed (by the president of the borough councils, or) by the chairman of the board of commissioners of such township. At the first appointment, one member shall be appointed to serve for one year, one for two years, and one for three years, one for four years, and one for five years; and thereafter one member shall, in like manner, be appointed each year, to serve for five years. The members of the board of health shall be residents of the municipality for which they are appointed, and shall serve without compensation: Provided, however, If any member of the board shall be elected to the office of secretary, he shall be entitled to receive a salary, fixed by the board, for that office.

Sec. 2, Act of June 12, 1913, P. L. 471.

644. The members of the board shall severally take and subscribe to the oath prescribed for (borough or) township officers; and shall annually organize by electing a president from among the members of the board, a secretary who may or may not be a member of the board, and a health officer who shall not be a member of the board. The secretary and the health officer shall receive such salary as may be

fixed by the board, and ratified by the (borough council or by the) board of commissioners of the township of the first class, and shall serve for a period of one year, or until such time thereafter as their successors may be elected and qualified. They shall severally give bond to the (borough or) township, in such sums as may be fixed by ordinance, for the faithful discharge of their duties, and shall also take and subscribe to the oath required by members of the board.

Sec. 3, Act of June 12, 1913, P. L. 471.

For the oath required of township officers see section 1, Act of June 5, 1913, P. L. 424, *supra* section 508.

645. The secretary of the board shall keep the minutes of their proceedings; shall keep accurate accounts of the expenditures of the board; shall draw and certify, under the seal of the board of health, all orders upon the treasurers of the (borough or) township of the first class, for the payment of moneys on account of the board of health, and shall present the same to the president of the board for his approval; shall render statements for the expenditures to the board at each stated meeting, or as frequently as they may require; shall prepare, under the directions of the board, the annual report to the (borough council or) township commissioners, together with the estimate of appropriation needed for the ensuing year; he shall report to the State Department of Health at the end of each week, and for the fraction of each week occurring at the end of each month, the cases of communicable disease reported to the board of health, on the form provided for that purpose by the State Department of Health; and shall also make an annual report to the State Department of Health; and shall make such other reports and perform such other duties as the board may require.

Sec. 4, Act of June 12, 1913, P. L. 471.

646. It shall be the duty of the health officer to attend all stated and special meetings of the board of health, and at all times be ready and available for the prompt performance of his official duties. He shall placard and quarantine all premises upon which cases of communicable disease exist, which have been reported to the board of health or of which he or the board of health may have knowledge, which are required by law, or by regulation of the State Department of Health or of the local board of health, to be placarded and quarantined; and shall disinfect such premises upon the expiration of the quarantine period, and the recovery of the last person therein suffering from such disease. He shall serve written notice on teachers and persons in charge of public, parochial, Sunday, and other schools, requiring the exclusion from school of children who are suffering from or who reside in the same premises with other persons who are suffering from communicable diseases; and shall make sanitary inspec-

tions, and shall execute the orders of the board of health, and shall in the performance of his duties have the power and authority of a policeman.

Sec. 5, Act of June 12, 1913, P. L. 471.

647. The said board of health shall have the power, and it shall be their duty, to enforce the laws of the Commonwealth, the regulations of the State Department of Health, and to make and enforce such additional rules and regulations to prevent the introduction and spread of infectious or contagious diseases, by the regulation of intercourse with infected places, by the separation of infected persons, and persons who shall have been exposed to any infectious or contagious disease, and by abating and removing all nuisances which they shall deem prejudicial to the public health; to mark infected houses or places, to prescribe rules for the construction and maintenance of house-drains, wash-pipes, soil-pipes and cesspools; and to make all such other rules and regulations as they shall deem necessary for the preservation of the public health. They shall also have power, with the consent of (councils or) township commissioners, in case of a prevalence or apprehended prevalence of any contagious or infectious diseases in their (borough or) township, to establish one or more emergency hospitals, and to make provisions and regulations for the maintenance and management of the same.

The board shall also have the power to make, enforce, and cause to be published, all necessary rules and regulations for carrying into effect the powers and functions with which they are invested by law, and the power and authority relating to the public health conferred on the (boroughs and) townships of the first class. Such rules and regulations, when approved by (the borough council and burgess or by) the township commissioners, (as the case may be,) and when advertised in the same manner as other ordinances, shall have the force of ordinances of the (borough or) township, (respectively;) and all penalties or punishment prescribed for the violation thereof, as well as the expenses actually and necessarily incurred in carrying such rules and regulations into effect, shall be recoverable, for the use of the (borough) or township, (respectively), in the same manner as penalties for violation of the ordinances of the (borough) or township, and subject to the like limitations as to the amount thereof.

Sec. 1, Act of April 14, 1915, P. L. 114, amending section 6 of the Act of June 12, 1913, P. L. 471.

648. Said board of health shall have the power as a body, or by committee, as well as the health officer, together with their assistants, subordinates, and workmen, under and by order of the said board, to enter at any time upon any premises in the (borough or) township upon which there is suspected to be any infectious or contagious dis-



ease, or nuisance detrimental to the public health, for the purpose of examining and abating the same.

Sec. 7, Act of June 12, 1913, P. L. 471.

649. The board of health may inspect house drains, waste and soil-pipes, cesspools, water-closets, slaughter-houses, hog-pens, stables, stable-yards, and any conditions or places whatsoever, in the (borough or) township of the first class, which may constitute a nuisance or a menace to public health; and whenever any condition or place in the (borough or) township of the first class is found by them to be a nuisance or a menace to the health of the people of the (borough or) township of the first class, they shall issue a written order of abatement, directed to the owner, or agent of the owner, of the premises, stating that the conditions specified therein constitute a nuisance or a menace to health, and ordering an abatement thereof within such time as may be specified by them in such order. In case such order of abatement is not obeyed within the time specified therein, they shall thereupon issue a further written order to the health officer, directing him to remove or abate the same; which order shall be executed by him and his subordinates and workmen, and the expense thereof shall be recoverable from the owner of the premises upon or from which the nuisance or menace to health is abated or removed, in the same manner as debts of like character are now collected by law; or the said board of health may proceed to enforce such other remedy, or inflict such penalty, as may by ordinance of the (borough or) township of the first class be provided.

Sec. 8, Act of June 12, 1913, P. L. 471.

650. It shall be the duty of the board of health to submit annually, to the (councils or) township commissioners, before the commencement of the fiscal year, an estimate of the probable expenditures of the board during the ensuing year; and (councils or) township commissioners shall then proceed to make such appropriation thereto as may be necessary; and the said board shall, in the month of January of each year, submit a report, in writing, to (councils or) township commissioners, of its operations and expenditures for the preceding year, together with such other information on subjects relative to the sanitary conditions or requirements of the (borough or) townships as may be necessary, and (councils or) township commissioners shall publish the same in their official journal.

Sec. 9, Act of June 12, 1913, P. L. 471.

651. Whenever, in the opinion of the Commissioner of Health of the Commonwealth of Pennsylvania, conditions found by him to exist in any (borough or) township of the first class in this Commonwealth shall constitute a menace to the lives and health of people



living outside the corporate limits of such (borough or) first class township, or if it be known to him that any (borough or) township of the first class is without an existing or efficient board of health, the Commissioner of Health may enter, and take full charge of and administer the health laws, regulations, and ordinances in such (borough or) township of the first class; and may continue in charge thereof until he shall decide that a competent, efficient board of health has been appointed and qualified for such (borough or) township of the first class, and is ready, able, and willing to assume and carry into effect the duties imposed upon it by law.

Sec. 10, Act of June 12, 1913, P. L. 471.

652. All expenses incurred by any local board of health, its officers or employes, in the performance of the duties imposed upon it by law, and all expenses incurred by the Commissioner of Health in accordance with the provisions of section ten of this act, shall be paid by the (borough or) township of the first class wherein such duties are performed in the same manner as other expenses of such (borough or) township of the first class are paid.

Sec. 11, Act of June 12, 1913, P. L. 471.

653. Whenever expenses incurred by the Commissioner of Health in the administration of health laws in any (borough or) township of the first class, in accordance with the provisions of this act, shall remain unpaid by said (borough or) township of the first class for a period over three months after a statement of such expense has been rendered by him to such (borough or) township of the first class, and demand for payment by him made, he shall, with the approval of the Governor, institute, in the name of the Commonwealth as plaintiff, an action of assumpsit against such (borough or) township of the first class, for the collection of such expense from the (borough or) township of the first class, in the same manner as debts of like amount are collected by law: Provided, however, That, upon the trial of any such action of assumpsit, the reasonableness of the expenditures made by the Commissioner of Health shall be submitted to the jury for its determination.

Sec. 12, Act of June 12, 1913, P. L. 471.

654. All expenses incurred by the Commissioner of Health in the administration of health laws in any (borough or) township of the first class, when paid to him by such (borough or) township of the first class, or when collected by him, shall be returned by him to the State Treasurer, who shall credit the amount so received to the appropriation made to the Department of Health.

Sec. 13, Act of June 12, 1913, P. L. 471.

655. An act, entitled "An act to enable borough councils to establish boards of health," approved the eleventh day of May, Anno Domini one thousand eight hundred and ninety-three; (P. L. 44,) and "An act to enable the township commissioners of townships of the first class in this Commonwealth to establish boards of health, and providing for the payment of the expenses thereof by the township," approved the twenty-ninth day of May, Anno Domini one thousand nine hundred and seven; (P. L. 302,) and all other acts or parts of acts, inconsistent herewith, be and the same are hereby repealed: Provided, That all boards of health, now in existence in (boroughs and) townships of the first class, shall continue to act as such until the board of health created by this act is appointed and qualified.

Sec. 14, Act of June 12, 1913, P. L. 471.

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## XX.

### ENFORCEMENT OF ORDINANCES. PROVISIONS RELATING EXCLUSIVELY TO FIRST CLASS TOWNSHIPS.

656. The policemen and constables of the several townships of the first class of this Commonwealth, in addition to the powers already conferred upon them, shall and may, without warrant and upon view, arrest and commit for hearing any and all persons guilty of a breach of the peace, vagrancy, riotous or disorderly conduct, or drunkenness, or may be engaged in the commission of any unlawful act, tending to imperil the personal security or endanger the property of the citizens, or violating any ordinances of said township for the violation of which a fine or penalty is imposed. Any person or persons arrested, with or without warrant, shall be entitled to a trial, and to give bail for his or her or their appearance, according to the practice in summary convictions in criminal cases.

Sec. 1, Act of June 10, 1901, P. L. 551.

657. All actions, prosecutions, complaints and proceedings for the violation of township ordinances, and for the collection of fines and penalties imposed thereby, may be commenced by warrant or by summons, at the discretion of the justice of the peace before whom the complaint is made or the proceeding begun; but no warrant shall be issued except upon complaint, on oath or affirmation, specifying the ordinance for the violation of which the same is issued; and all proceedings shall be directed to, and be served by, any policeman or constable of said township, who shall execute the same anywhere within the township or in the county of which it is a part, or elsewhere in the

State, as may be provided by law. Warrants shall be returnable forthwith; and upon such return, the like proceedings shall be had in all cases as are or may be directed by law in relation to summary convictions, with the same right of appeal from any final judgment entered therein, except where otherwise provided by existing laws. When any person is arrested on view, a complaint, on oath or affirmation, shall be immediately made, whereupon the like proceedings shall be had as upon a warrant issued. All fines or penalties for the violation of township ordinances shall be paid over to the township treasurer.

Sec. 2, Act of June 10, 1901, P. L. 551.

An officer is liable in trespass who arrests on view for violation of a sidewalk ordinance, and does not make any complaint until the following day: *Winters vs. Pugh*, 9 Del. Co., 144.

To sustain a proceeding for the violation of a township ordinance under this act, there must be a complaint on oath or affirmation, and the suit must be brought in the name of the township. *Com. v. Maurer*, 22 Montg. 33.

658. Any person arrested for the violation of a township ordinance may be committed to the township lockup pending a hearing or trial, but in case there is no suitable lockup, or place in which to detain prisoners, the person arrested may be committed to the county jail. Upon judgment against any person by summary convictions or by proceedings by summons, on default of payment of fine or penalty imposed by said judgment and the costs, the defendant may be sentenced and committed to the township lockup for a period not exceeding five days, or to the county jail for a period not exceeding thirty days: Provided, however, That no fine or penalty shall exceed one hundred dollars for any single violation of any ordinance. And Provided further, That in case the defendant has goods or property of any kind whatsoever, out of which said judgment and costs can be collected by execution, capias or other process, the plaintiff in the action may elect to proceed to collect the said judgment for fine or penalty and costs by said proceedings.

Sec. 3, Act of June 10, 1901, P. L. 551.

659. Hereafter when a prisoner shall be committed to any county jail or prison in this Commonwealth, either for the non-payment of a fine or penalty imposed for the violation of (any city or borough ordinance, or) any ordinance of a township of the first class, or while awaiting a hearing upon any charge for the violation of (any city or borough ordinance, or) any ordinance of a township of the first class, the costs of proceedings and the expenses of maintaining such prisoner during his confinement by virtue of any such commitment, shall be borne and paid by the (city, borough, or) township of the first class whose ordinances were alleged to have been violated, or to which any

such fines or penalties are payable; and the county in which such (city, borough or) township of the first class is located shall not be liable to the sheriff for any such maintenance, or to any officer, magistrate, or person for any costs of such proceedings.

Sec. 1, Act of June 7, 1911, P. L. 677.

This act supplies the Act of March 28, 1905, P. L. 61. It was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

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## XXI.

### ACTIONS BY AND AGAINST TOWNSHIPS. PROVISIONS RELATING TO BOTH FIRST AND SECOND CLASS TOWNSHIPS.

660. All suits by a (county or) township shall be brought and conducted by the (commissioners or) supervisors thereof respectively, and in all suits against a (county or) township, process shall be served upon, and defence made by the (commissioners or) supervisors thereof, (respectively.)

Sec. 5, Act of April 15, 1834, P. L. 537.

The supervisors need not be made parties in a suit against a township, and service on one supervisor is sufficient: *Shea v. Plains Township*, 7 *Kulp*, 554.

It seems this section would apply to first class townships, see section 47 *supra*.

661. If judgment shall be obtained against a township, the like proceedings may be had to enforce payment out of the township funds, according to the circumstances of the case.

Sec. 7, Act of April 15, 1834, P. L. 537.

"Like proceedings" refers to collection of judgments obtained against counties, the procedure for which is set forth in section 6 of the Act of April 15, 1834, P. L. 537, viz: "If judgment shall be obtained against a county in any action or proceeding, the party entitled to the benefit of such judgment, may have execution thereof as follows, and not otherwise, viz: It shall be lawful for the court in which such judgment shall be obtained, or to which such judgment may be removed by transcript from a justice of the peace or alderman, to issue thereon a writ commanding the commissioners of the county to cause the amount thereof, with the interest and costs, to be paid to the party entitled to the benefit of such judgment out of any moneys unappropriated of such county, or if there be no such moneys, out of the first moneys that shall be received for the use of such county, and to enforce obedience to such writ by attachment," and the Act of April 22, 1905, P. L. 296: See *Wolf v. Salem Twp.*, 35 *Pa. C. C.* 157.

This is the only method by which a person can secure the benefit of a



judgment against a township. Neither an ordinary fieri facias nor an attachment execution can be issued against a township: *Hilbert v. North Codorus Twp.*, 14 *York*, 21; *Wolf v. Salem Twp.*, 35 *Pa.*, C. C. 157.

662. In case of any unsatisfied judgment, or any suit or process of law, against any township, (borough, school or poor district, or other municipal district,) in this commonwealth, any tax-payer of said district may inquire into the validity of any judgment, or defend said district in any suit or judgment, upon petition, accompanied by affidavit that said tax-payer believes that injustice will be done to said district in said suit or judgment, presented to the court of common pleas in which said suit may be pending or judgment may exist, shall have the right to come into the court and defend said district in any suit, and inquire into the validity of any judgment against said municipal district, as fully and completely as the officers of said district would, by law, have the right to do: Provided, That said tax-payer shall, whenever the court shall deem it necessary, file in said court of common pleas a bond, with one or more sufficient sureties, to be approved of by said court, to indemnify and save harmless said district from all costs that may accrue in said suit, subsequently to filing said petition.

Sec. 1, Act of March 23, 1877, P. L. 20.

This act was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312. The words "municipal district," were construed not to include second class cities in *Black et al v. Pittsburg*, 230 *Pa.*, 312. The right of a citizen to become a party to any suit or process under this act exists only where the proceedings in which he applies to intervene are instituted in the court of common pleas. *Hower Appeal*, 127 *Pa.*, 134.

663. In all cases where a judgment shall be rendered by any justice of the peace or alderman against any township, (borough, poor district, or school district) of this Commonwealth, in which by existing laws the right of appeal is given to such municipality, any tax-payer of such township, (borough, poor district, or school district) may take an appeal, in behalf of such municipality, from such judgment to the court of common pleas of the proper county, within the time prescribed by law for taking appeal by the defendant, if for a period of ten days immediately after the rendition of judgment the proper municipal officials neglect or refuse to take and perfect such appeal, and file the same in said court: Provided, That such tax-payer shall in taking the appeal make an affidavit that the same is not taken for delay, but because he, she or it verily believes injustice has been done, and shall pay the costs of the appeal, and enter good and sufficient bail for the payment, on the affirmation of the judgment,

of all other costs before the justice of the peace or alderman and all the costs in the court of common pleas.

Sec. 1, Act of May 11, 1911, P. L. 208.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

664. That upon filing the said appeal in the court of common pleas of the proper county, the said taxpayer shall be made a party to the suit, and shall have the right to defend such municipality therein.

Sec. 2, Act of May 11, 1911, P. L. 208.

This section was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312.

665. Hereafter all municipalities of the Commonwealth of Pennsylvania may proceed for the recovery of any municipal claim or claims, whatsoever, by lien or by action of assumpsit; and authority is hereby conferred upon justices of the peace to entertain such actions of assumpsit to the limits of their jurisdiction.

Sec. 1, Act of March 25, 1909, P. L. 78, amending section 1, Act of April 4, 1907, P. L. 40.

This act was repealed so far as it relates to boroughs by the Act of May 14, 1915, P. L. 312. Following the reasoning in *Barret v. Plymouth*, 12 Montg. 120, it seems this act applies to townships.

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